Supreme Court, U.S.
FILED
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No. 15-214

In the
Supreme Court of the United States

JOSEPH P. MURR, et al.,

Petitioners,

v.

STATE OF WISCONSIN and ST. CROIX COUNTY,

Respondents.

On Writ of Certiorari to the Court of Appeals of the State of Wisconsin

JOINT APPENDIX

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Petition for Writ of Certiorari filed Aug. 14, 2015
Petition for Writ of Certiorari granted Jan. 15, 2016

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The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

Memorandum Decision and Order of the Circuit Court of St. Croix County (October, 31, 2013) B-1

Decision of the Court of Appeals of the State of Wisconsin, District III (Dec. 23, 2014) A-1

Order of Supreme Court of the State of Wisconsin, Denying Petition for Review (April 16, 2015) C-1

Chronological List of Relevant Docket Entries

Circuit Court of St. Croix County, State of Wisconsin

Joseph P. Murr, et al.

v. Case No. 12 CV 258

State of Wisconsin and St. Croix County

Dkt.	Date	Description
2	March 9, 2012	Complaint and Verified Petition for Inverse Condemnation Filed
18	June 28, 2013	Affidavit of Remzy D. Bitar
22	Aug. 1, 2013	Plaintiffs' Brief Opposing Summary Judgment, and Affidavit of Michael Waterman
31	Oct. 31, 2013	Memorandum Decision and Order of the Circuit Court of St. Croix County Filed
33	Nov. 19, 2013	Notice of Entry of Judgment of Circuit Court
49	Dec. 19, 2013	Notice of Appeal Filed in Circuit Court
58	Dec. 26, 2013	Motion for Reconsideration Denied

Chronological List of Relevant Docket Entries

Wisconsin Court of Appeals, District 3

Joseph P. Murr, et al.

v. Appeal No. 2013AP002828

State of Wisconsin

Dec. 26, 2013	Notice of Appeal and Court Record Filed
May 27, 2014	Brief of Appellants Filed
June 26, 2014	Brief of Respondent St. Croix County Filed
June 26, 2014	Brief of Respondent - State of Wisconsin Filed
July 15, 2014	Reply Brief of Appellant Filed
Oct. 7, 2014	Case Submitted on Briefs
Dec. 23, 2014	Opinion/Decision Filed
Jan. 28, 2015	Opinion Ordered Unpublished

Chronological List of Relevant Docket Entries

Wisconsin Supreme Court

Joseph P. Murr, et al.

v. Appeal No. 2013AP002828

State of Wisconsin

Jan. 21, 2015	Petition for Review Filed
April 16, 2015	Petition for Review Denied

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

COMPLAINT AND VERIFIED PETITION FOR CONDEMNATION

Case No. 12CV258
Condemnation Review: 30402

JOSEPH P. MURR
6722 Odell Ave South
Hastings, Minnesota 55033

MICHAEL W. MURR
699 Brentwood Drive
Eagan, Minnesota 55123

DONNA J. MURR
3718 Tamara Drive
Eau Claire, Wisconsin 54701

PEGGY M. HEAVER
3148 Crane Creek Place
Eagan, Minnesota 55121

Plaintiffs,

v.

STATE OF WISCONSIN
c/o its Attorney General
State Capitol Room 114 East
P.O. Box 7857
Madison, Wisconsin 53707-7857

ST. CROIX COUNTY
1101 Cannichael Road
Hudson, Wisconsin 54016,
Defendants.

The plaintiffs, by their undersigned counsel, complain against the State of Wisconsin and petition against St. Croix County pursuant to section 32.10 as follows:

Identity of the Parties

1) Plaintiff Joseph P. Murr is an adult individual residing at 6722 Odell Ave South, Hastings, Minnesota 55033.

2) Plaintiff Michael W. Murr is an adult individual residing at 699 Brentwood Drive, Eagan, Minnesota 55123.

3) Plaintiff Donna Murr is an adult individual residing at 3718 Tamara Drive, Eau Claire, Wisconsin 54701.

4) Plaintiff Peggy M. Heaver is an adult individual residing at 3148 Crane Creek Place, Eagan, Minnesota 55121.

5) Defendant State of Wisconsin is a sovereign entity represented by its Attorney General, Room 114 East, State Capitol, P.O. Box 7857, Madison, Wisconsin 53707-7857.

6) Defendant St. Croix County is a political body of the State of Wisconsin and it is organized under Chapter 59 of the Wisconsin Statutes. Its principal location and address is the St. Croix County Government Center, 1101 Carmichael Road, Hudson, Wisconsin 54016.

Description of the Properties

7) The Plaintiffs are the fee owners of residential property adjacent to the St. Croix River. The legal description for the property is attached as Exhibit A.

8) The Plaintiffs' property is located in the St. Croix Cove Subdivision.

9) The St. Croix Cove Subdivision plat was created in the 1950s.

10) The plat identifies the Plaintiffs' property as Lot E and Lot F. Each lot is approximately 1 1/4 acres.

11) The Plaintiffs' parents, William and Margaret Murr, acquired Lot F in 1960. Shortly afterwards, they built a cabin entirely within the boundaries of Lot F. Lot F was soon transferred to William Murr Plumbing, Inc.

12) The cabin on Lot F remains in existence today. It is used by the Plaintiffs as a family, summer cabin.

13) William and Margaret Murr acquired the adjacent Lot E in 1963. They acquired it as investment property with the intention of eventually developing it separate from Lot F or selling it to a third party, who would presumably develop it for him or herself. To this day, Lot E remains vacant.

14) In 1994, the cabin lot (Lot F) was transferred to the Plaintiffs. The vacant lot (Lot E) was transferred to the Plaintiffs in 1995.

15) Both lots have always been tax assessed as two individual residential, buildable lots.

Background on the Relevant Regulations

16) In response to an amendment to the Wild and Scenic River's Act (16 U.S.C. § 1271 et seq), the Wisconsin Legislature enacted section 30.27.

17) Section 30.27(2) directed the Wisconsin Department of Natural Resources (DNR) to adopt by rule guidelines and specific standards for riverway zoning ordinances for the banks, bluffs and bluff tops of the Lower St. Croix River.

18) Section 30.27(3) requires counties, cities, villages and towns to adopt riverway zoning that complies with the DNR's guidelines and standards.

19) Section 30.27(3) also permits the DNR to adopt an ordinance for a city, county, village or town if a city, county, village or town does not adopt a riverway zoning ordinance within the time prescribed, or the DNR determines that the ordinance that was adopted does not satisfy its requirements.

20) In response to section 30.27, the DNR adopted Administrative Code chapter NR 118.

21) In 1975, St. Croix County enacted the Lower St. Croix Riverway Ordinance. It was revised in 1977 to make it consistent with NR 118.

Facts Pertaining to the Taking of Land Without Compensation

22) In 2004, the Plaintiffs started working with the St. Croix County Zoning Department. The Plaintiffs desired to flood-proof the cabin on Lot F and sell Lot E as a buildable lot.

23) The zoning department determined that Lot E could not be sold or developed as a separate lot based

on Section 17.36.I.4, which mirrors Administrative Code section NR 118.08(4). These regulations prohibit the sale or development of adjacent lots in common ownership, unless each of the lots has at least one acre of net project area.

24) The zoning department concluded that because Lots E and F came under the common ownership of the Plaintiffs, each lot needed at least 1 acre of net project area in order to be separately sold or developed. Because the Plaintiffs' lots each had less than I acre of net project area, they could not be separately sold or developed, according to the county.

25) On behalf of herself and the rest of the Plaintiffs, Donna Murr filed papers with the Board of Adjustment seeking review of the zoning department's determination that the adjacent lots could not be separately sold or developed. She also sought several variances and special exception permits.

26) The DNR opposed Donna Murrs' requests.

27) In a decision dated June 28, 2006, the Board of Adjustment denied Donna Murrs' requests and affirmed the zoning department's determination that the Plaintiffs' lots could not be separately sold or developed.

28) Donna Murr commenced an action for certiorari review of the board's decision. The trial court affirmed that portion of the board's decision that relates to the sale and development of adjacent lots.

29) Donna Murr appealed the decision to the Wisconsin Court of Appeals.

30) The DNR entered an appeared in the court of appeals and filed briefs in support of the board's decision.

31) The board's decision was affirmed on appeal.

32) Donna Murr filed a petition for review with the Wisconsin Supreme Court. The court denied the petition for review on May 24, 2011.

33) The Plaintiffs have exhausted their administrative remedies and a final decision has been rendered regarding the application of the regulations to the Plaintiffs' property. The application of Ordinance section 17.36.I.4 and Administrative Code section NR 118.08(4) deprives the Plaintiffs of all, or practically all, of the use of Lot E because the lot cannot be sold or developed as a separate lot. The only purpose for the lot is as a single-family, residential lot and without the ability to sell or develop it, the lot is rendered useless.

35) The lot cannot be put to alternative uses, such as agriculture or commerce due to its size, location and steep terrain.

36) Under ordinance section 17.36.1.4 and the county's determination, a single-family home cannot be built on Lot E, and the Claimants are prohibited from selling the lot. The Claimants are left stuck with a vacant lot that serves no purpose or use, and since it cannot be sold, it has no value.

37) The restrictions of ordinance section 17.37.1.4 and Administrative Code section NR 118.08(4) are excessive and the Defendants have therefore taken the Plaintiffs' land.

38) The Defendants have not provided just compensation for the taking.

39) The Plaintiffs served the Defendants with a Notice of Claim that demanded compensation for the taking of their land.

40) Defendant St. Croix County denied the claim, and the Plaintiffs were notified of the denial by a letter dated October 3, 2011.

41) Defendant State of Wisconsin did not issue a denial of the claim, but more than 120 days have passed since the State was served.

42) The actions of the Defendants constitute an uncompensated taking under Article 1, section 13 of the Wisconsin Constitution.

WHEREFORE, the plaintiffs request the following relief:

A. As against St. Croix County, relief pursuant to Wisconsin Statute section 32.10;

B. As against the State of Wisconsin, compensation for the taking as guaranteed by the Wisconsin Constitution.

C. As against both Defendants, costs, disbursements, attorney's fees and any other relief the court deems just and appropriate.

Dated: 3-9-12

MUDGE, PORTER, LUNDEEN & SEGUIN, S.C.
Attorneys for Plaintiffs

BY: s/ R. Michael Waterman
State Bar No. 1025674
Address
110 Second Street
PO Box 469

Hudson, Wisconsin 54016
(715) 386-3200

VERIFICATION
of Plaintiff Donna J. Murr

[Verifications omitted]

EXHIBIT "A"

PART OF LOT ONE (1) OF CERTIFIED SURVEY MAP IN VOLUME ONE (1) OF CERTIFIED SURVEY MAPS, PAGE 9, AS DOCUMENT NUMBER 258820, FILED IN ST. CROIX COUNTY REGISTER OF DEEDS OFFICE ON JULY 21, 1959, BEING A PARCEL OF LAND LOCATED IN GOVERNMENT LOT TWO (2), SECTION TWENTY FOUR (24), TOWNSHIP TWENTY EIGHT (28) NORTH, RANGE TWENTY (20) WEST, TOWN OF TROY, DESCRIBED AS FOLLOWS: From a point on the West line of said Section 24 which is a distance of 646.30 feet Nl 036'W of the West Quarter of said Section 24, go N89°41'E a distance of 225.0 feet to point of beginning; thence N4°20'W a distance of 522.97 feet; thence due East on a meander line a distance of 58.65 feet; thence S2°47'E a distance of 31.84 feet; thence S76°48'E a distance of31.97 feet; thence S5°44'E a distance of 486.20 feet to Cove Road; thence S89°4 l'W a distance of 100.00 feet along Cove Road to point of beginning; including all land between the meander line and Lake St. Croix.

ALSO, PART OF LOT ONE (1) OF CERTIFIED SURVEY MAP IN VOLUME ONE (1) OF CERTIFIED SURVEY MAPS, PAGE 9, AS DOCUMENT NUMBER 258820, FILED IN ST. CROIX COUNTY REGISTER OF DEEDS OFFICE ON JULY 21,1959, BEING A PARCEL OF LAND LOCATED IN GOVERNMENT

LOT TWO (2), SECTION TWENTY FOUR (24), TOWNSHIP TWENTY EIGHT (28) NORTH, RANGE TWENTY (20) WEST, TOWN OF TROY, DESCRIBED AS FOLLOWS:

Commencing on West line of said Section 24, 646.30 feet NI 036'W of West Quarter corner of said Section; thence N89°41 1E 325.00 feet; thence N5°44'W 378.59 feet to place of beginning; thence N5°44'W 107.61 feet; thence S76°48'E 50.00 feet; thence S5°44'E 66.77 feet; thence S56°46 'W 53.32 feet to place of beginning.

AND, PART OF GOVERNMENT LOT TWO (2) SECTION TWENTY FOUR (24), TOWNSHIP TWENTY EIGHT (28) NORTH, RANGE TWENTY (20) WEST, TOWN OF TROY, FURTHER DESCRIBED AS FOLLOWS: From a point on the West line of said Section 24 which is 646.30 feet NI 036'W of the West Quarter comer of said Section 24, go N89°4l 'E a distance of 125.00 feet to point of beginning; thence N4°20'W a distance of 523.50 feet; thence due East on a meander line a distance of 100.00 feet; thence S4°20'E a distance of 522.97 feet to Cove Road; thence 889°41 'W a distance of 100 feet along Cove Road to the point of beginning, including all land between the meander line and Lake St. Croix, NOW KNOWN AS LOT ONE (1) OF CERTIFIED SURVEY MAP IN VOLUME ONE (1), OF CERTIFIED SURVEY MAPS PAGE 10, AS DOCUMENT NUMBER 258940.

Together with and subject to easements as shown on said Certified Survey Maps.

St. Croix County, Wisconsin.

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

JOSEPH P. MURR, et al. Case No.: 12-CV-258

Plaintiffs,

v.

STATE OF WISCONSIN and
ST. CROIX COUNTY,

Defendants.

AFFIDAVIT OF SCOTT R. WILLIAMS

STATE OF WISCONSIN)
)SS.
COUNTY OF ST. CROIX)

SCOTT R. WILLIAMS, being first duly sworn on oath deposes and states as follows:

1. I am an adult resident of the State of Wisconsin. I make this affidavit, based on my own personal knowledge.

2. I am the president of Scott Williams Appraisal Inc. and a State of Wisconsin General Certified Real Estate Appraiser.

3. I inspected and appraised the real estate located at 202 Cove Court, Hudson, Wisconsin 54016-8031 on November 20, 2012.

4. Attached as Exhibit A is a true and correct copy of the report I prepared regarding the November 20, 2012 appraisal of the real estate located at 202 Cove Court, Hudson, Wisconsin 54016-8031.

Dated this 26th day of June, 2013.

BY s:/Scott R. Williams
SCOTT R. WILLIAMS
Scott Williams Appraisal Inc.

[Notarization Omitted]

Affidavit of Scott R. Williams, Exhibit A,
(Appraisal, dated January 28, 2013)
Certified Record Docket No. 17
Circuit Court of St. Croix County

January 28, 2013

Ms. Sara K. Beachy
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, Wisconsin 53707-7857

Mr. Remzy D. Bitar
Crivello Carlson, S.C.
The Empire Building
710 North Plankinton Avenue, Suite 500
Milwaukee, Wisconsin 53203

Re: An appraisal of a cabin 011 the St. Croix River, 202 Cove Court, Town of Troy, St Croix County, Wisconsin. Owners (in 2006): Thomas E. Murr, Michael W. Murr, Peggy M. Heaver, Joseph P. Murr, and Donna M. Murr. Our file#: 1529-12

Dear Ms. Beachy & Mr. Bitar:

In accordance with your request, I have appraised the above property and by virtue of my personal site visit and investigation herewith submit my opinion of the

Market Value of the fee simple property rights subject to the assumptions and limiting conditions. This appraisal cannot be completely understood without reading the *Assumptions and Limitations of Appraisal* section of this report; it should be thoroughly read and understood before relying on any of the information or analysis presented herein. This letter is part of the attached appraisal report and is invalid if used separately.

I inspected the subject property November 20, 2012. At the inspection were Attorney Sara Beachy representing the Wisconsin Department of Justice, Attorney Remzy Bitar representing St. Croix County, Attorney Michael Waterman representing the property owners, and two of the property owners.

Values Calculated as of June 28, 2006:

Two Lots Scenario	$771,100
One Lot Scenario	$698,300
Difference	$ 72,800

I, the undersigned, hereby certify that I have no interest in this property whatsoever, either present or prospective, and that my employment is not contingent in any way upon the amount of the value reported. I also certify that all of the information and analysis contained in this report is true to the best of my knowledge and belief.

Thank you very much for this opportunity to be of service. If there are any questions, please call or write to me at the above address.

Respectfully submitted,

SCOTT WILLIAMS APPRAISAL INC.

S/ Scott R. Williams

Scott R. Williams, MAI, SRA
Wisconsin Certified General Appraiser
Certificate # 1
Appraiser

jh

Location Map of Subject

West Troy

T28N • R20&19W

I. Property Data – "As Is" With One Buildable Lot

Property Identification

Location: The property is at the west end of Cove Court which provides access to the lower level of the subject property. The upper part of the subject property has frontage on Cove Road.

Frontage on St. Croix River
West of Highway F
About three miles south of Hudson
St. Croix County, Wisconsin

Address: 202 Cove Court
Hudson, Wisconsin 54016-8031

Owner: In 2006, the owners were as follows:
Michael W. Murr
Thomas E. Murr
Peggy M. Heaver
Joseph P. Murr
Donna J. Murr

Legal Description*

The property being appraised is part of Government Lot 2 in Section 24, Township 28 North, Range 20 West. A full legal description is shown in the addenda of this report as Exhibit E.

Title of Record

It is understood that this property has been in the Murr family since the early 1960's. According to a family member, the cabin was built in about 1961 by the parents of the current owners. Exhibit F in the addenda of this report shows a 1994 deed from the

parents (William F. Murr & Margaret D. Murr) to their children who at the time were as follows:

Michael W. Murr
Steven J. Murr
Thomas E. Murr
Peggy M. Heaver
Joseph P. Murr
Donna M. Timmons

The children took title as joint tenants and not tenants in common. The 1994 deed was for the east lot of the subject property. The 1994 deed was for the east lot of the subject property. In 1995; the west lot was conveyed from the parents to the same children. That deed is shown as Exhibit G in the addenda of this report.

In 2003, Steven J. Murr quit claimed his interest to the other Murr children. Donna M. Timmons is listed on the quit claim deed as n/k/a Donna J. Murr. This 2003 deed is shown as Exhibit H in the addenda of this report. It reflects the ownership situation as of the valuation date of this appraisal (June 28, 2006):

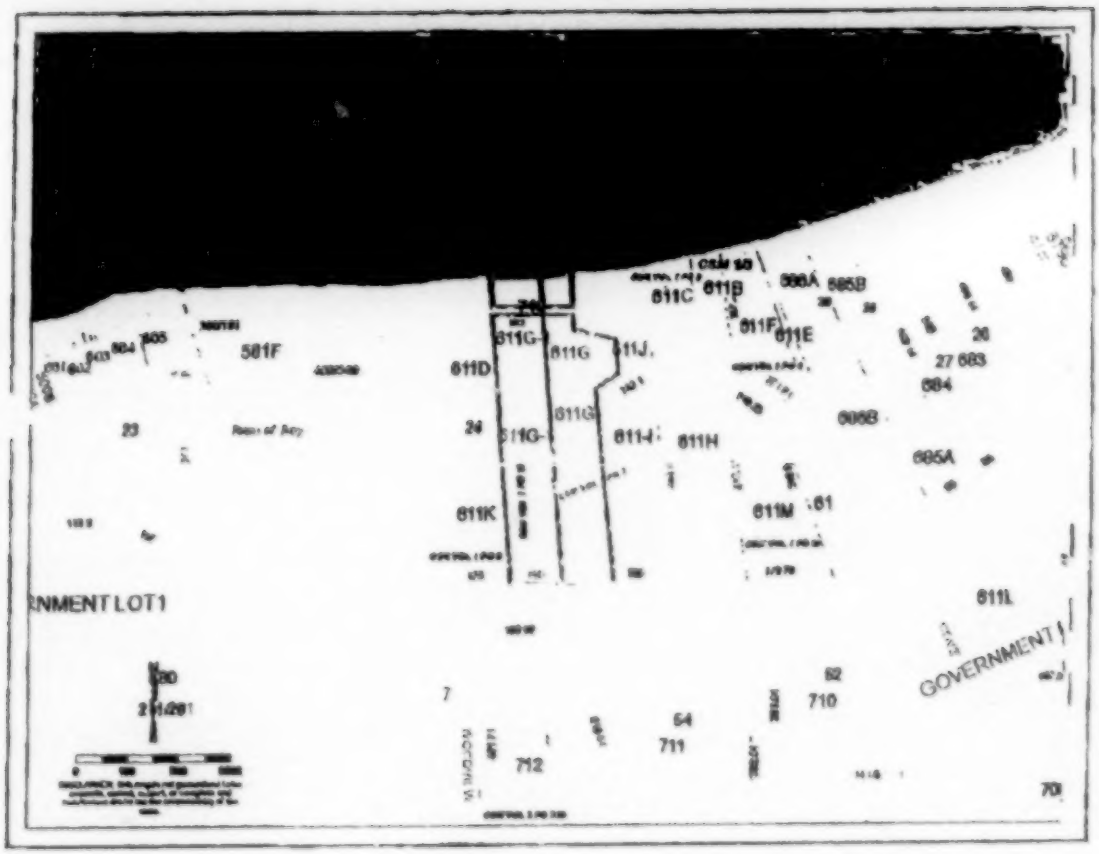
Michael W. Murr
Thomas E. Murr
Peggy M. Heaver
Joseph P. Murr
Donna J. Murr

More recently (in 2010, which is four years after the valuation date of this appraisal), Thomas E. Murr and his wife Gretchen M. Murr quit claimed their interest in the subject property to the remaining children. This results in the ownership situation today (in January 2013) with the owners being:

Michael W. Murr
Peggy M. Heaver
Joseph P. Murr
Donna J. Murr

* The legal description is believed to be correct, but its accuracy cannot be guaranteed. It should be verified by legal counsel before being used in a conveyance or legal document.

Tax Parcel Map Showing Subject



This transfer took place on March 11, 2010. The deed is shown as Exhibit "I" in the addenda of this report.

In 2011, a utility easement for telephone was granted and that is shown as Exhibit J in the addenda of this report.

Current Activity

I know of no current accepted offer to purchase (agreement of sale), option to purchase, or listing for sale of the subject property.

Tax Parcel Situation

The subject property is carried as two tax parcels in the St. Croix County records. They are as follows:

East Parcel: 040-1155-80-000

West Parcel: 040-1155-85-000

A Tax Parcel Map is shown on the opposite page. The west parcel of the subject property is marked 611 G-1 and the east parcel is marked 611 G.

In 2006, there were separate assessments on these two parcels. Starting in 2011, however, the assessments were combined under tax parcel 040-1155-80-000, but the subject property was still maintained as two separate tax parcels on the records. Exhibit K in the addenda of this report shows the 2006 property records from St. Croix County on these two parcels.

Background For This Appraisal

The Murr parents bought the cabin parcel of land in 1960, and a cabin was built on the property in about 1961. In 1963 the Murr parents bought the subject

west parcel of land. The small boathouse parcel (far east part of property and now merged with the subject east parcel) was bought in 1964.

In 1994 and 1995, the property was conveyed from the parents to the children and it has been used cooperatively by the children since then. The subject property has therefore been in the Murr family since the early 1960's. The children took title the same way (same grantee names) in both the 1994 and 1995 deeds.

The early surveys show the subject property as two lots, and it has continued to be shown as two lots up to the present. The property tax records also reflect that there were two lots and continue to reflect two lots through the end of 2012. As of January 1, 2011, however, the Assessor stopped putting separate values on each parcel and instead put all of the assessed value on the east parcel (040-1155-80-000).

In early 2006, the Murrs applied to the St. Croix County Board of Adjustment for eight variances and special exceptions concerning the subject property. First, they wanted a "variance to use two contiguous substandard lots in common ownership in the lower St. Croix River Way District as separate building sites pursuant to Section 17.36.I.4.a.1-3 of the St. Croix County Zoning Ordinance."

The other seven items related to a plan to solve the flooding problem of the subject cabin. Basically, the cabin was to be torn down and rebuilt a little further south at the base of the bank at a higher elevation. The variances and special exceptions were required to accomplish the proposed project since the cabin is in a highly regulated area called the "Lower St. Croix

Riverway Overlay District". The zoning regulations having to do with the Riverway Overlay District were enacted in July 1, 2005 and amended July 1, 2007, but this overlay district was a successor to the St. Croix River Valley District ordinance as amended January 1, 1976, 7/1/80, 10/1/96, and 2/15/2000.

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The St. Croix County Board of Adjustment turned down all eight of the requested variances and special exceptions. That left the Murrs with one lot rather than two and meant that their proposal to cure the flood problems of the cabin could not go forward.

The Murrs appealed the decision of the St. Croix County Board of Adjustment to St. Croix County Circuit Court and then that decision was appealed to the District III Wisconsin Court of Appeals, which affirmed the Board of Adjustment decision. The Court of Appeals decision was in turn appealed to the State Supreme Court, but the Supreme Court decided not to hear the case. It is my understanding that the Court of Appeals decision dated and filed February 15, 2011 is therefore the final decision in this case.

Without getting involved in the details of the decision, the Court of Appeals basically affirmed the original decision of the St. Croix County Board of Adjustment so the Murrs own one lot since, for purposes of the zoning ordinance, the two substandard lots merged into one because title was taken under the same names in 1994 and 1995. In addition, since none of the variances or special exceptions were granted by the St. Croix County Board of Adjustment, it is not possible to flood proof the cabin by tearing it down and rebuilding

it further back into the base of the bank on higher ground as was proposed.

With regard specifically to the question of whether there are one or two buildable lots on the subject property, the zoning department cited Section 17.36.I.4.a.2 that deals with "substandard lots". It states: "Adjacent substandard lots in common ownership may only be sold or developed as separate lots if each of the lots has at least one acre of net project area." In definition 135 of 17.09, net project area is defined as: "Developable land area minus slope preservation zones, flood plains, road rights-of-way, and wetlands." Both the east and west lots of the subject property have less than ½ acre of net project area so there is no separate salable lot.

In its decision dated June 28, 2006, the St. Croix County Board of Adjustment affirms the zoning department's determination that the subject property is only one lot and no separate buildable lot can be sold off. The Circuit Court and Court of Appeals also affirmed this determination. The Wisconsin Supreme Court denied a petition for review on May 24, 2011.

After the Supreme Court denied the petition for review, the Murrs made a claim against the State of Wisconsin and St. Croix County under the theory that a taking of the west lot had taken place. According to the subsequent lawsuit filed, St. Croix County denied the claim and the State of Wisconsin did not respond within 120 days. The Murrs then filed a lawsuit against the State of Wisconsin and St. Croix County for compensation for the alleged taking.

Our firm, Scott Williams Appraisal Inc., has been jointly retained by attorneys representing the State of

Wisconsin and St. Croix County to answer certain valuation and use questions concerning the subject property. Primarily, we have been asked to value the subject property as it existed on June 28, 2006 (the date of the St. Croix County Board of Adjustment decision referred to above) in "as is" condition. This means that the property would have had to comply with the zoning code and there would only be one buildable lot on the subject property.

We have also been asked to value the property with a hypothetical condition that there were two build able lots on the subject property as of June 28, 2006 with the west lot having 99.53' of river frontage and the east lot having 58.37' of river frontage. The purpose of valuing the property with the hypothetical condition is that it is then possible to determine a value difference between the two situations.

St. Croix Cove Plat Map Showing Subject

Land Description

Size

There have been four surveys of all or part of the subject property over the years. They are shown as Exhibits L through O respectively in the addenda of this report. Exhibits L and M are two surveys with the same date of July 18, 1959. Exhibit L includes all of the subject property plus other property to the east. Exhibit M surveys off the west 100' of the larger parcel shown in Exhibit L. Exhibit M is basically what is being called the west part of the subject property in this appraisal report.

Exhibit N is the third survey map dated October, 1959. It includes part of the east portion of the land surveyed in Exhibit L.

Exhibit "O" is the fourth survey map which is dated December 1, 2005. It appears to have been prepared for an application for special exceptions and variances that were requested by the Murr family in an effort to rebuild the cabin a little further back in order to elevate it and get it out of the flood area. The special exceptions and variances were denied so the project did not go forward. This 2005 survey appears to be the most comprehensive in showing the subject property as it existed June 28, 2006 and as it exists today in January of 2013.

The 2005 survey shown in Exhibit O in the addenda of this report divides the subject property into Parcel "A" and Parcel "B". Parcel A is the west parcel and Parcel B is the east parcel. According to the survey, Parcel A has 1.193 acres to the meander line and approximately

1.27 acres to the ordinary high water mark. Parcel B has 1.19 acres to the meander line and about 1.25 acres to the ordinary high water mark. The totals for Parcels A and B are 2.383 acres to the meander line and about 2.52 acres to the ordinary high water mark. The survey further indicates that Parcel A (west parcel) has 99.53' of St. Croix River frontage at the meander line and Parcel B has 58.37' of St Croix River frontage at the meander line. This results in a total river frontage of 157.90'.

Terrain

The subject property has upper level land along Cove Road at the top of the bluff. There is also lower level land along the river. Both of these portions of the subject property are relatively level. In between is a bank with a steep slope. The total drop is about 130'.

On the opposite page is a *St. Croix Cove Plat Map Showing Subject* with the subject property being designated "E" and "F". Some of the topographic lines are 10' apart and some are 20' apart. Tue elevations are shown on the lines. They indicate a total drop of about 130'.

Floodplain

Exhibit R in the addenda of this report is a Flood Hazards Map showing the subject property. The map shows that the upper level land and bluff slope is in an area of low flood risk. Most of the lower level land is in an area of high flood risk (floodway). There is a narrow strip of land at the foot of the bank that is an area of moderate flood risk. It is shaded in green on the map.

There are quite a few floodplain references in the paper work related to the 2006 zoning variances and special exceptions requests. According to the St. Croix County zoning office, the cabin on the subject property "is located within the floodplain of the St. Croix River, which is measured at the 100-year regional flood elevation of 691.6' mean sea level (MSL) . . .". The boundary between the floodway and the flood fringe is at the 10-year flood elevation of 687' MSL. The cabin ground elevation is 688' MSL so it is outside the flood way but within the flood fringe. The Ordinary High Water Mark (OHWM) is 682' MSL (shown on survey in Exhibit O in the addenda of this report).

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It is understood that the lower level land floods to a greater or lesser extent. The flood waters reach the cabin approximately every ten years on average. According to Tom Murr and Peggy Heaver, they can recall that the cabin flooded four times since 1960 (1965, 1969, 1997, and 2001). They said that the highest flood elevation was 5½' up the lower level walls of the cabin.

Soils

The upper level land has Gotham loamy fine sand with 2%-6% slopes. These are somewhat excessively drained soils formed in sandy deposits. According to the USDA/NRCS Soil Report, these soils have a "very limited" rating for septic tank absorption fields because of seepage in the bottom layer and filtering capacity.

The bluff bank land has Emmert loamy sand with 12%-35% slopes ("E" slopes). These are excessively drained soils formed in stratified sand and gravel. They are considered to be highly erodible for federal

farm programs. These soils are rated "very limited" for septic tank absorption fields because of seepage in the bottom layer, filtering capacity and slope.

The land in the lower level consists of Udifluvents. These are soils deposited by flooding. These soils are somewhat poorly drained to moderately well drained. It is saturated within 5' of the surface during wet periods. These soils are not rated for septic tank absorption fields since they are usually in areas that flood and are therefore not suitable for buildings or septic tank absorption fields.

Ground Cover

The property is completely wooded except for the beach. The upper level and bank have an attractive tree cover of oak and other hardwoods. The trees range from small to large, but they are typically medium to large. The lower level land is also wooded with willows and other miscellaneous hardwoods.

Water Frontage

The subject property has frontage on the St. Croix River (also known as Lake St. Croix in this area) as shown in the survey maps. The fourth survey map (2005) shown as Exhibit O in the addenda of this report shows meander line frontage of 99.53' for the west lot and 58.37' for the east lot, for a total of 157.9 front feet The survey shows an ordinary high water mark elevation of 682.0' and shows the 200' ordinary high water mark setback line which is approximately the upper level driveway that leads to the house west of the subject. The subject property faces north and has an excellent view looking up river. Since this is at a bend in the river, it is a long distance view.

The St. Croix River is wide and a major natural resource in this area. It is heavily developed for recreation and the frontage is heavily used for home sites. The subject beach is sand and small stones (mostly stoney) for the most part. The river has clear water. As indicated on the *Tax Parcel Map Showing Subject* on page 3 of this report and the *Aerial Photos of Subject & Neighborhood* shown as Exhibits P and Q in the addenda of this appraisal, there is an access strip that runs east-west along the subject frontage.

Access

The upper level land has frontage on Cove Road, a paved town road. Cove Court is a paved private road owned by the Winford Land Owners Association. Cove Court provides drivable access to the cabin and lower level land of the subject property. Cove Court is on a 30' wide easement. Cove Court is the primary access road for several cabins including the subject. Cove Court is posted "steep hill no winter traffic". According to the Murrs this is because the road would be unsafe and therefore the Owners Association has liability concerns. This means that the subject property is accessible only on foot and by snowmobile in the winter, and also possibly by all-terrain vehicle (ATV). It is not accessible by car in the winter.

* * * * *

A short distance after the unpaved private driveway continues from the end of Cove Court, there is a split and a lower level driveway leads to the subject cabin while an upper level driveway (a little higher than the cabin roof) runs westerly to the house on the adjoining lot west of the subject property. This upper level

driveway is a 30' wide access easement. This access easement is shown on the survey maps shown in Exhibits L, M and O in the addenda of this report.

Utilities

Electricity and telephone serve both the upper level land and the lower level land of the subject property including the cabin. There is natural gas in Cove Road that serves the upper level land, but there is no natural gas down Cove Court to serve the lower level land of the subject. The subject property uses LP gas and there is a tank on site. There is no municipal sewer and water in the neighborhood.

Easements

Please see the *Zoning, Easements, and Restrictions* section of this report The subject property has an east-west access easement driveway 30' wide that connects Cove Court to the house west of the subject property on the lower level land.

Homeowners Association

There is a "Winford Land Owners Association" that maintains a private beach (adjoining the northeast part of the subject property) and maintains the Cove Court access road. It is understood that the owners of the subject property are members of the Association.

Building Improvements

There is a cabin on the subject property as well as an outbuilding (boathouse).

Site Improvements

Site improvements are clustered around the cabin. They include an unpaved driveway and an LP gas

tank. In addition to the cabin's screen porch and covered concrete slab, there is a 1,639 sq.ft. concrete patio, a 3.5' high concrete block retaining wall between the cabin and boat house, and a stairway that leads from the patio to the land above the retaining wall.

Parts of the driveway have a low rock retaining wall along the east side (about 12" high). In addition, in places there is some rock set on the surface of the hill on the uphill side of the driveway to help with erosion control.

According to Tom Murr, the well is a sand point about 160' deep. He indicates that the water is clear and there is plenty of water. He said the water was tested in 2001 and tested safe. He also indicated that there is a two-tank system for sewerage. The first tank has no bottom and catches sludge. The second tank is a cesspool with round concrete block construction to allow the leaching out of the affluent. He indicated that the sewerage disposal system is in working order.

I noticed a pipe sticking out of the ground near the southeast corner of the building a little south of the building. I am not certain what is under the ground, but for purposes of this appraisal, it is assumed that what ever it is would not present environmental hazard that would create problems for the property.

* * * * *

combination storms and screens on the slide-by windows.

Roof

The roof has a slight pitch and is partly gable and partly shed style. Surface has rolled asphalt roofing. The roof has wood frame construction. There is about a 2' roof overhang with wood fascia and soffit. There are some gutters.

Other Comments

This property is built into a hillside. Under the typical residential categorization system, the cabin would have 723 sq. ft. of living area above grade (the upper level only). The lower level would be considered finished below grade. In practice, however, the entire north elevation and a small part of the east elevation are at to slightly above surrounding land grade on the lower level and there are lower level windows on all four sides. For purposes of this appraisal, both levels are considered to be living area.

There is a brick fireplace in the dining area. This is on an interior wall on the lower level, but the chimney continues on an exterior wall (north elevation) of the upper level. The exterior portions of the chimney are brick.

There is a 218 sq.ft. screen porch off the kitchen (on the river side) and a 100 sq.ft. covered concrete slab.

The subject cabin has been in the Murr family since it was built in about 1961. It is not winterized and has been used as a 3-season cabin. It is understood that the wood frame walls are insulated as is the roof. I am not sure as to the extent of the insulation (if any) on the lower level concrete block walls. It is understood that the crawl space is not insulated. The water pipe from the well to the cabin is above ground and is not insulated.

Construction quality on the cabin is pretty good for a 3-season structure. It probably could be winterized if a purchaser wanted to do it, but the lack of drivable access in the winter likely means that most purchasers would use the cabin as the Murrs have been using it

Overall, this building is in average condition. It appears to have been maintained, but many aspects are dated. The susceptibility to flooding, while it doesn't happen every year, is an ongoing issue. The Murr family wanted to elevate the building to eliminate the flooding problem, but they were unsuccessful in obtaining the permissions needed to execute the plan.

The problem appears to be that there are so many regulations affecting the lower level of the subject land that any substantial attempt to address the cabin flooding and location issue would be very time consuming and expensive to try to address. It could be very difficult to obtain permission and, in the end, success would be speculative at best.

Boathouse

The boathouse measures 20' x 26' for a total of 520 sq.ft. It appears to be about as old as the house and construction is similar.

It is a one story structure with a main room, three storage closets, and a half bath. It is built on a concrete slab. The main room has a concrete floor, unpainted concrete block walls for the exterior walls and knotty pine on the interior partition wall. The ceiling is insulation board in 4' x 8' sheets. There is wood trim and wood slide-by windows with aluminum storms and screens. There is also a large bank of windows on the west elevation.

* * * * *

Zoning, Easements and Restrictions

Parcels of real estate can have various legal restrictions on their use. These restrictions can come from government (such as zoning) or private parties (such as easements and deed restrictions).

Unless otherwise stated below it is an assumption of the value given in this report that no significant legal use restrictions exist, except zoning, that would significantly affect the value of the subject property.

Zoning

Land along the St. Croix River in this area is highly regulated. There are a number of aspects of the zoning code that affect the subject property. Some of the major sections are briefly commented on below.

The subject property is zoned Agricultural Residential with lower St. Croix River overlay, A zoning map is shown as Exhibit S in the addenda of this report.

Base Zoning

Section 17.15 .deals with the base zoning for Agricultural Residential District. It indicates permitted uses primarily of agricultural uses and "one single family dwelling". The minimum lot area "shall be an average of not less than two acres with a minimum lot area of 1½ (1.5) acres." Lots in cluster subdivisions authorized under an applicable town subdivision ordinance may have a minimum lot area of

one acre. The minimum lot size for a "conservative designed development" is ½ acre.

Side yard setbacks for single-family residences shall be not less than 25' in the aggregate and no single side yard shall be less than 10' wide. The maximum building height is 35' or 2½ stories, whichever is greater. For residential buildings, however, the height may be increased by not more than 10' or one story when all yards and other required open spaces are increased in width by 1' for each foot of height by which such building exceeds the normal height limit of 35'.

In addition to the agricultural and single family dwelling permitted uses, there is a fairly long list of "special exceptions" that "may be allowed within the Agricultural Residential District upon approval of the Board of Adjustment as provided in Subchapter VII. These special exceptions include two family dwellings and a long list of commercial uses.

Subchapter III.V, Section 17.36, Lower St. Croix River Overlay District

This district was enacted July 1, 2005 and amended July 1, 2007. The subject property is within this River Overlay District

There are no structures except docks, piers and wharves (which are subject to Wisconsin Department of Natural Resources Administrative Rules Standards and Army Corps of Engineers permit requirements) that are allowed without a land use permit from the St. Croix County Zoning Administrator. With a permit, single family residences and various governmental structures are permitted.

The minimum lot size is governed by the base-zoning district. However, there is a minimum net project area requirement of at least one acre for each lot. Net project area is defined as "developable land area minus slope preservation zones, flood plains, road rights-of-way, and wetlands."

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For the subject property, it appears that the only land that would count as net project area would be the land between the bluff line (line demarcating top of bluff as shown on the 2005 survey map in Exhibit "O" in the addenda of this report) and Cove Road. The net project area depth from Cove Road is marked on that survey at 158' and the total width of both lots together is 200'. This means that there is only about .73 acres of net project area land on the subject property or about .36 acres of net project area land per lot. The subject property can still be considered as one buildable lot according to the 7/15/11 Court of Appeals decision (Appeal No. 2008AP2728), presumably because it is grandfathered.

The minimum lot width in the River Overlay District is "200 feet measured at the building line and at the side of the lot nearest the river." With regard to density standards: "There may be no more than: one principal structure on each parcel."

The maximum structure height is 35'. Building structures shall be set back at least 200' from the ordinary high water mark of the lower St. Croix River.

There is a bluffline setback of "at least 100 feet from the bluffline in the rural residential management zone, and 200 feet from the bluffline in the conservation management zone. Structures that do not meet setback

may be permitted, however, if they are at least 40' from the bluffline and meet certain requirements.

There is a "slope preservation zone". The subject bank would appear to qualify as a slope preservation zone. "No structures, except docks, piers, wharves, structural erosion control measures, stairways, and lifts may be placed in slope preservation zones" and "no filling or grading is allowed in slope preservation zones that directly face and/or drain directly into the river. except the minimum required for installation of [these] items . . . ." Slopes greater than 12% may not be altered to become less than 12%.

There is a section on substandard lots which applies to lots of record in the Register of Deeds office on January. 1, 1976. These lots are buildable if various criteria are met. One of the criteria is "the lot is in separate ownership from abutting lands." This would appear to be a requirement that was not met when the Murr children took title to the two lots of the subject property in 1994 and 1995 since they took title under the same names for both lots.

Subchapter III, Shoreland Zoning 17.25-17.35

The subject property is subject to shoreland zoning. The subject property is subject to this section of the zoning code since it has frontage on the St. Croix River. With regard to minimum lot area: "Lot area shall be an average of not less than two (2) acres with a minimum lot area of 1½ (1.5) acres." Side yard requirements are an aggregate minimum width of 25' and a minimum width of one side yard of at least 10'. There is a water setback of 75' for buildings.

Subchapter IV, Section 17.40, Floodplain Overlay District

This section of the zoning code was enacted September 30, 2005. The subject property is in this district. It appears to deal primarily with those parts of the subject property that are in the flood plain. This includes the subject cabin which is located in the flood fringe. It does not appear that structures are allowed in the floodway. Uses permitted are generally open space type uses.

Structures do appear to be allowed in the flood fringe district (where the subject cabin is located), but there are a number of restrictions. One is that "the elevation of the lowest floor, excluding the basement or crawl way, shall be 2' or

more above regional flood elevation on fill. The fill shall be one foot or more above the regional flood elevation extending at least 15' beyond the limits of the structure."

Town of Troy Zoning

All of the zoning discussion above concerns county zoning. The Town of Troy also has zoning ordinances. The Town adopts county zoning: "Chapter 17 of the St. Croix County Zoning Ordinance is hereby adopted by reference and made the zoning ordinance of the Town of Troy, provided that the zoning restrictions and administrative provisions herein shall control over any similar provision of the county ordinance. The Town of Troy shall defer to St Croix County in the administration of this zoning ordinance, except in areas of additional zoning restrictions as set forth herein. In those situations, as to those provisions, the Town shall enforce all portions of its zoning ordinance."

The Town has a fairly extensive subdivision ordinance. In general, unsewered lots in subdivisions must have a minimum lot size of 2. 5 acres although a minimum lot size of two acres is available on "single splits".

There is also an extensive "Chapter 171: Lower St. Croix Riverway Zoning Ordinance". The "general standards" mostly seem to parallel the county ordinance. This is not surprising since the County ordinance is based on state law.

Conclusion

As can be seen in the brief summary above, the zoning provisions that affect the subject property are numerous and complex. It is my understanding, however, that the subject cabin can continue to be used "as is" on the site at its existing location.

The Murrs applied for a number of variances and special exceptions to enable the existing structure to be removed and a new structure built a little behind the existing structure (cabin) on a higher level. There were some changes to the building size requested. In the end, none of these variances and special exceptions were granted.

The Murrs also requested some type of variance or confirmation that they own two separate buildable lots that could be sold separately. In the end, this was not granted and the Court of Appeals specifically stated that, for zoning purposes, the subject property is one buildable lot.

Because of the complexity of the zoning in this area, it is essential that interested parties understand that the statements given in this appraisal report with regard to zoning may not take all of the complexities into

consideration since they are only brief summaries of isolated zoning points. Professionals such as St. Croix zoning office personnel, surveyors, engineers, or attorneys should be consulted before coming to any conclusions with regard to what is allowed for any specific proposed improvement project on the subject property.

Easements

There is a 30' wide driveway easement that connects Cove Court to the house west of the subject property on the lower level land. The easement runs east-west and is shown on the 2005 survey map included as Exhibit "O" in the addenda of this report.

Although not shown on the 2005 survey map, there is a trail or walking path shown on various maps and aerial photos including the *Tax Parcel Map Showing Subject* on page 3 of this report and aerial photos shown in Exhibit P and Q in the addenda of this report. It is my understanding that there are some properties that front on the St. Croix River further west of the subject property

that are accessed by this path. It is my understanding that larger vehicles such as cars and trucks are not permitted so this is not a driveway. For purposes of this appraisal, it is assumed that this is some type of a public or private thoroughfare and the owners of the subject property could not block its use.

Although subsequent to the valuation date shown in this report, Exhibit J is a 2011 utility easement for telephone that was granted. It is a strip of land 5' in width within a corridor along the existing private road

described in the document. There may also be other minor utility easements.

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II. Area and Neighborhood Analysis

Area Analysis

The property being appraised is located on Cove Road and Cove Court in the Town of Troy in St. Croix County, Wisconsin. This is in the Hudson area on the St. Croix River which forms the boundary between Wisconsin and Minnesota. The intensively developed part of the Twin Cities (Minneapolis/St. Paul) begins about five miles west of the subject property in Woodbury. The influence of the Twin Cities on population and real estate extends to the subject neighborhood.

A Demographic Analysis- Hudson Area chart is shown on the next page. As can be seen on the chart, the subject area both east and west of the St. Croix River is growing much faster than the country as a whole and also faster than either Wisconsin or Minnesota. The Town of Troy, for instance, grew 28.5% between 2000 and 2010. The City and Town of Hudson are growing even faster.

Those portions of Pierce County along the river from Prescott north are also growing faster than Wisconsin, Minnesota or the USA, but they are not growing as fast as the area to the north in St Croix County. The area directly across the river in Washington County is similar to the Pierce County river front lands.

Exhibit T in the addenda of this report shows a report from the Site To Do Business (STDB). This report is oriented in terms of drive times from the subject property and includes drive times of 10 minutes, -15 minutes, and 20 minutes. The drive time map with the three different areas is shown as the first page in Exhibit O. Most of the area covered is in Wisconsin since it is not possible to drive across the river except at the I-94 bridge.

The STDB report is current as of January, 2013 although the data is often a little older. It reflects a time beyond the 2006 valuation date for the subject property, but it is still interesting. It shows rapid population growth and an aging population. although probably no more so than the rest of the United States. Educational achievement is significantly higher than the USA with a little over 40% having a bachelors degree or higher compared with a 26.7% average for the United States as a whole.

Employment is slightly higher than for the United States, but the occupational status is seven percentage points higher white collar than the United States. The average commute time was 25.1 minutes which is about the same as for the United States as a whole. A significant number of people who live in this area commute into the Twin Cities. The median home value in the area is significantly higher than the United States average.

In 2010, about 32% of households had income over $100,000 per year, including 10% with incomes of greater than $150,000 per year.

Transportation in the area is good with Highway 1-94 running through Hudson. This is an east-west

interstate that connects the Twin Cities with Madison, Milwaukee and Chicago. Taking the Highway 29 exit east of Menominee leads to Eau Claire, Wausau and Green Bay. Highway F runs north-south and connects Hudson with Prescott.

St. Croix County has a land area of 722 square miles including 14 square miles of water. Population density is 117 people per square mile. The cost of living is slightly below the US average.

The average house hold size is 2.7 people which is a little lower than the 3 person average for Wisconsin. Median household income is $65,000 in the County compared with the Wisconsin average of $50,000 so the County is generally prosperous with much of the prosperity being concentrated along the river. The median house price is also significantly higher than in the State of Wisconsin as a whole.

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Demographic Analysis Hudson Area

	Population		
	2000	2010	Percent Increase
USA	281,421,906	308,745,538	9.7%
Wisconsin	5,363,675	5,686,986	6.0%
Minnesota	4,919,479	5,303,925	7.8%
Wisconsin			
St. Croix County	63,155	84,385	33.6%
Town of Troy	3,661	4,705	28.5%

Town of Hudson	6,213	8,461	36.2%
City of Hudson	8,775	12,719	44.9%
Totals except county	18,649	25,885	38.8%
Pierce County	36,804	41,019	11.5%
Town of Clifton	1,657	2,012	21.4%
City of Prescott	3,764	4,258	13.1%
City of River Falls	12,560	15,000	19.4%
Totals except county	17,981	21,270	18.3%
Minnesota			
Washington County	201,130	238,136	18.4%
Afton City	2,839	2,886	.7%
St. Marys Point	344	386	12.2%
Lakeland City	1,917	1,796	- 6.3%
Lake St. Croix Beach	1,140	1,051	- 7.8%
Lakeland Shores	355	311	- 12.4%
Denmark Township	1,348	2,886	114.1%
West Lakeland Township	3,547	4,046	14.1%
City of Hastings	18,204	22,172	21.8%
Totals			

except county	29,694	35,534	19.7%

Summary of Named Areas Within Counties

St. Croix County	18,649	25,885	38.8%
Pierce County	17,981	21,270	18.3%
Washington County	29,694	35,534	19.7%
Totals	66,324	82,689	24.7%

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Single family new house construction building permits in the County hit a peak of 1,208 in 2004 and have been declining ever since. In 2006, there were 561 permits for new houses. By 2009, the number had fallen to 119.

The City of Hudson is the county seat of St. Croix County. It had a 2010 population of about 13,000 and was experiencing rapid growth during the 2000-2010 period. The City of Hudson and Town of Hudson have a combined population of over 20,000 and form the major population center of St. Croix County.

With its strategic location a short distance from the twin Cities on both the St. Croix River and Highway I-94, Hudson's growth is expected to be significantly above state and national averages for the foreseeable future. It must be kept in mind that the I-94 bridge from Wisconsin into Minnesota is the most heavily traveled crossing point from Wisconsin into the states to the west.

Like St. Croix County, Hudson's median house prices are significantly higher than the Wisconsin state

averages, as is the household income. The workforce has excellent educational achievement. The manufacturing sector employs 16% of the population which is significantly below the Wisconsin state average. The workforce tends to be employed in white collar industries. Hudson is number 39 on the list of "Top 100 cities with highest median household income and median resident age less than 35." Over the years, Hudson has become more and more of a bedroom community for the Twin Cities.

In general, the economic base of this area is dependent upon the economic base of the Twin Cities since a significant number of people commute into the cities to work. There is ample land for expansion and it is not unusual to see good size subdivisions springing up in the rural locations along Highway F south of Hudson. The ability to easily commute into the cities on Highway I-94 gives this immediate area a significant advantage on drive time compared to any other location in western Wisconsin.

In general, the economy was doing well in 2006. There were a few economic storm clouds on the horizon, but relatively few people were concerned about them at the time. The official state date for the "Great Recession" was December, 2007. Both the local economy and the real estate market were doing well in 2006. Construction was beginning to slow, but was still fairly busy at that time.

Neighborhood Analysis

The upper level land of the subject property has frontage on Cove Road. A short distance west of the subject property, Cove Road ends and there is a 90

degree turn to the left where the road becomes Woodview Trail, which dead-ends a little over ½ mile south of where it turns off from Cove Road. Woodview Trail south of Cove Road has about seven houses on large lots. These are newer and very nice homes in the higher price ranges. East and west of the subject upper level land are also larger good quality homes, although not as new.

Cove Court is a private road that leads down to the lower level land of the subject property. This is a private road owned by the Winford Land Owners Association which also owns the beach at the northeast corner of the subject property. The beach actually takes a notch out of the subject property at its northeast corner and cuts down on the frontage of the east lot of the subject property.

The cabins on the lower part of Cove Court appear to be mostly like the cabin on the subject property in that they are probably used seasonally because they are older and would have the same winter access problems as the subject (because Cove Court is not open in the winter).

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Adjoining the west line of the subject property lower level is a somewhat newer high quality home—much higher quality than the subject or most of the other uses along the lower part of Cove Road. It appears to be a year-round structure although it probably is not used year-round because of the access problems on Cove Court.

In general, the subject property is part of a larger neighborhood of seasonal and year-round homes along the Wisconsin side of the St. Croix River. This is a

desirable neighborhood with many of the newer homes being high value. The river frontage, especially, is quite valuable and highly desired by purchasers.

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III. Objective and Scope of Appraisal

Highest And Best Use of Land Alone "As Is"

The Dictionary of Real Estate Appraisal defines the highest and best use of land or a site as though vacant as follows:

> "Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements."

Based upon the above considerations as well as the surrounding uses and economic factors of the Town of Troy area, the highest and best use of the subject land as if vacant would be for residential use as one lot. This use is consistent with current zoning, there is demand for this type of use in the market as of the valuation date, and the property is physically adaptable to this type of use.

The building site would be at the top of the bluff along Cove Road and not on the lower level accessible by Cove Court. The lower level land on the subject property is in flood plain and is not legally buildable for a number of reasons. It would not be possible to

build into the bank at the bottom of the bluff since this would be contrary to the slope preservation zone regulations. The only building site would therefore be at the top of the bluff.

• H&BU Land Alone "As Is": Residential With One Build able Lot

Highest and Best Use of Property As Currently Improved "As Is"

The Dictionary of Real Estate Appraisal defines the highest and best use of a property as improved as follows:

> "The use that should be made of a property as it exists. An existing property should be renovated or retained as long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one."

Based upon the above considerations, as well as the surrounding uses and economic factors of the Town of Troy area, the highest and best use of the subject property as currently improved would be the present use of a cabin on the lower level land off Cove Court. It is understood that this use is grandfathered and therefore permitted although no substantial changes can be made without variances. Based on the decisions of the St. Croix County Board of Adjustment in regard to the Murr family's latest request for variances (and recent decisions by the County Circuit Court and the Court of Appeals on the case), it would seem that

variances along the lines of those requested would be difficult if not impossible to obtain.

In addition to being legally permitted as a grandfathered use, the property is physically adaptable for use as a cabin site and there is demand for this type of use. Although the cabin floods periodically (about every 10 years on the average) it is possible to clean up and fix up the property after the flooding so that it can again be used. The threat of flooding does adversely affect the contributory value of the cabin to the total value of the subject property, however.

Consideration was given to the question of what would happen, if anything, to the cabin if a large home would be built on the upper level of the subject property along Cove Road. While it would seem logical that the cabin could continue to be used as a guest house as long as it was not sold separately, it does not appear that would be permitted. According to the density standards in the Lower St. Croix Riverway Overlay District in 17.36.G.3.a, "There may be no more than one

principal structure on each parcel." Definition 159 defines principal structure as: "The main building or other structure on a lot that is utilized for the property's principal use. Principal structure includes attached garages and. porches." Definition 160 defines principal use as: "The primary purpose for which a lot or parcel is used."

In discussing the situation with the St. Croix County Zoning Office, they felt that the cabin could probably not continue as a guest house if a large home would be built at the top of the bank since then there might be two residential structures on the property. As to

whether modifications could be made to the cabin to make it into a beach house not used as a residential structure (along the lines of an elaborate gazebo), they were not sure. It might be possible to remove all the bedroom finish upstairs so that there would no longer be any bedrooms or make other building modifications that could meet the requirements.

Because of all of the regulations in the neighborhood, on complicated issues like this it is difficult to get a definitive answer without developing a plan and presenting it. To a casual reader, it would seem that the boathouse, patio and screen porch would not be defined as a principal residential structure so they might be safe. With the rest of the cabin, anything from complete demolition to light modification might be possible. If the interior finish were removed and the building were used for storage, however, it is hard to see how it could be defined as a principal structure.

It is difficult to forecast the exact plan a buyer might have for the subject property. I believe that a preponderance of buyers might want to put a large home on the top of the bank and use the improvements at the bottom as much as possible for recreational purposes. It would not be surprising, however, to find a purchaser interested in buying the entire lot who would continue to use the improvements at the bottom of the bank as the principal residential structure and forego building at the top of the bank on at least an interim basis. It must be kept in mind that the possibility would remain open to the purchaser at any time in the future and also open to subsequent buyers.

• H&BU As Improved "As Is": Residential With One Build able Lot

Reasonable Marketing and Exposure Time

USPAP Advisory Opinion 7 defines reasonable marketing time as follows:

> "An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal."

Estimated reasonable marketing time for the subject property is 6-12 months. Please note, however, that marketing time will vary depending upon subsequent events, and the presence or absence of specific buyers for this type of property at any given point in time.

According to our sale records, marketing times can vary from no time at all when an offer is made on a property that is not really for sale to over two years in situations where a buyer for the particular type of property is not available at that time. In addition, it takes time for a sale to be consummated due to examining whether the property is suitable for the particular purchaser and putting together an acceptable package to both parties. Based on this information, the average time for properties like the subject appears to be approximately 6-12 months.

- Reasonable Market Time: 6-12 Months

- 30 -

* * * * *

Summary of Values

	Number of Front Feet	Value Per Front Foot	Total Value	Rounded Value	Total
Land Values					
All of subject land as one lot	157.90	$4,000	$631,600	$631,600	$631,600
Subject land as two lots:					
East lot	58.37	$4,500	$262,665	$262,700	
West lot	99.53	$4,000	$398,120	398,100	
Total of subject land as two lots	157.90			$660,800	$660,800
Difference in land values					$ 29,200
Improved Values					
All of subject property as one lot	157.9			$698,300	
Subject property as two lots:					
East lot (including buildings)		58.37		$373,000	
West lot (land only)		99.53		398,100	
Total of subject property as two lots		157.9		$771,100	$771,100
Difference in property values					$72,800

Allocation of Improved Values

	One Lot	Two Lots	Difference
Land	$631,600	$660,800	$29,200
Improvements	66,700	110,300	43,600
Total	$698,300	$771,100	$72,800

IX. Summary and Value Conclusion

A *Summary of Values* chart is shown on the opposite page. It shows a summary of both land values and improved values with the differences calculated. There is also an allocation of improved values that breaks down both the one lot and two lot scenarios into land and improvements components. The differences are also shown.

The total difference in value between the one lot and two lot scenarios is $72,800.

When the St. Croix River Valley District, Subchapter III, Section 17.36 as amended on January 1, 1976 (and subsequently amended further) came into being, it merged adjoining substandard lots under the same ownership. The two subject lots were substandard, but under different ownerships at that time, even though they were both controlled by the Murr parents.

When the Murr children were given title to both lots in 1994 and 1995 under the same children's names, the two substandard lots were merged for purposes of the zoning ordinance. This was affirmed by the Court of Appeals. Merger meant that there was then one buildable lot, so there could no longer be two separate salable lots, each with its own building site.

This report valued the subject property under two scenarios: first that there is only one buildable lot, and second that there are two buildable lots with the division being as shown in the 2005 survey in Exhibit O in this appraisal report. The difference in value is as follows:

Two Lots Scenario	$771,100
One Lot Scenario	$698,300

Difference $ 72,800

- Difference Between One Lot & Two Lot Scenarios $72,800

Respectfully submitted,

SCOTT WILLIAMS APPRAISAL INC.

S/ Scott R. Williams

Scott R. Williams, MAI, SRA
Wisconsin Certified General Appraiser
Certificate #1
Appraiser

jh

Aerial Photo of Subject

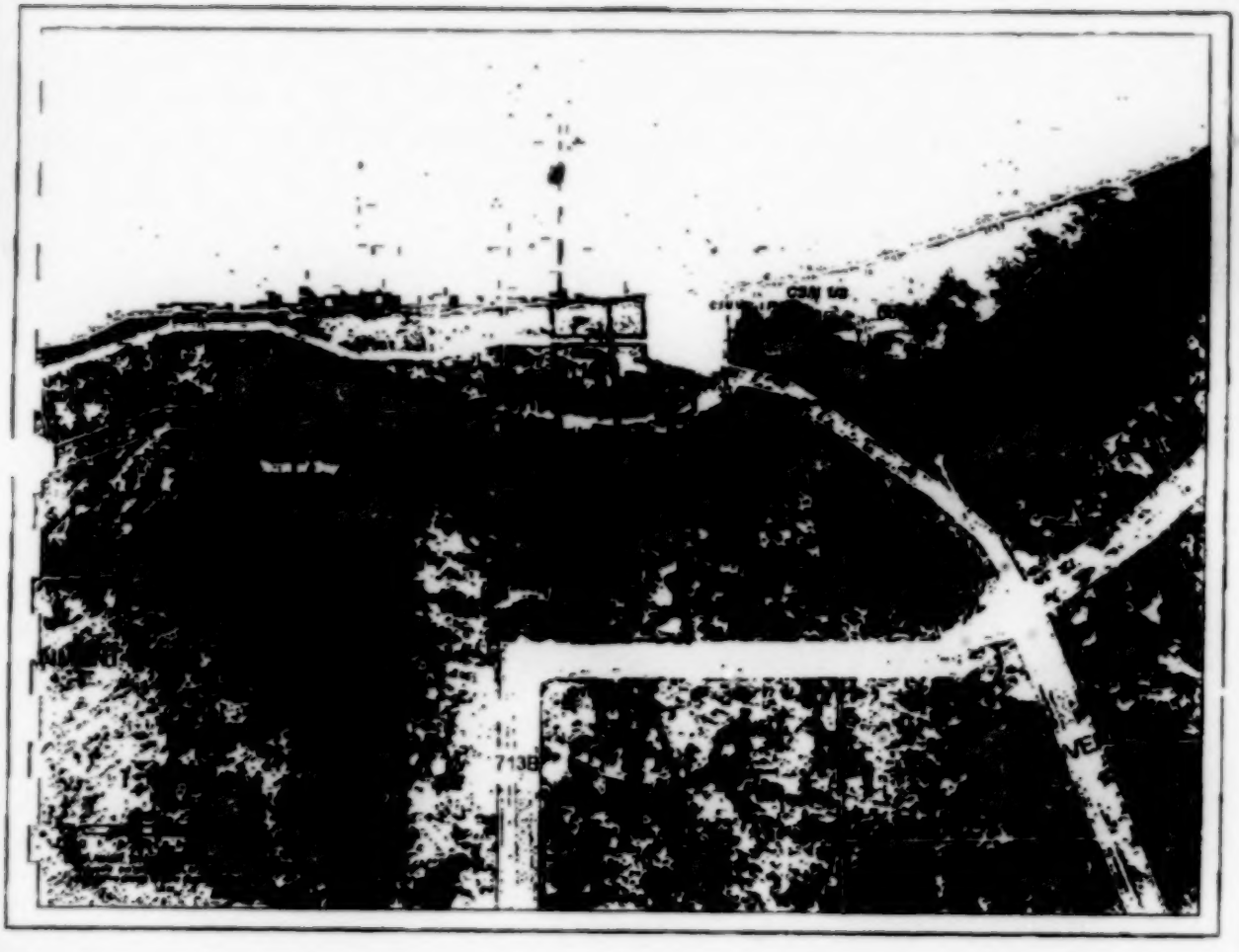


Exhibit P

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

JOSEPH P. MURR, et al. Case No.: 12-CV-258

Plaintiffs,

v.

STATE OF WISCONSIN and
ST. CROIX COUNTY,

Defendants.

Affidavit of Remzy Bitar, Exhibit I,
(St. Croix Board of Adjustment Decision, dated June 28, 2006) Certified Record Docket No. 18,
dated June 28, 2013

June 28, 2006 File Ref: SE0057

Donna Murr, Et Al

104 E Grant Avenue

Eau Claire, WI 54701

Re: St. Croix County Special Exception and Variance Requests Parcel #s: 24.28.20.611G, 24.28.20.611G-1, Town of Troy

Dear Ms. Murr:

The St. Croix County Board of Adjustment (Board) has reviewed the following special exception and variance

Requests for your property in the Lower St. Croix Riverway District in the Town of Troy:

Item #1: Variance to use two contiguous substandard los in common ownership in the Lower St. Croix Riverway District as separate building sites pursuant to Section 17.36 I.4.a.1-3 of the St. Croix County Zoning Ordinance.

Item #2: Variance to reconstruct and expand a nonconforming principal structure without using the same footprint as the original structure in the Lower St. Croix Riverway District pursuant to Section 17.36 I.2.e.1(g) of the St. Croix County Zoning Ordinance.

Item #3: Variance for filling and grading and placing a structure in the slope preservation zone (SPZ) in the Lower St. Croix Riverway District pursuant to Section 17.36 H.3.a-c of the St. Croix County Zoning Ordinance.

Item #4: Special exception request for filling and grading within 40 feed of the slope preservation zone (SPZ) in the Lower St. Croix Riverway District pursuant to Section 17.36 F.3.a.5 of the St. Croix County Zoning Ordinance.

Item #5: Special exception request for filling and grading in excess of 2000 square feet in the Shoreland District pursuant to Section 17.29 (2)(c)3 of the St. Croix County Zoning Ordinance.

Item #6: Variance to construct retaining walls and stairs that encroach within the OHWM setback in the Lower St. Croix Riverway District pursuant to Section 17.36 G.5.c.1 of the St. Croix County Zoning Ordinance.

Item #7: Variance to construct a patio within the OHWM setback in the Lower St. Croix Riverway District pursuant to Section 17.36 G.5.c.1 of the St. Croix County Zoning Ordinance.

Item #8: Variance to construct a deck within the OHWM setback in the Lower St. Croix Riverway District pursuant to Section 17.36 G.5.c.1 of the St. Croix County Zoning Ordinance.

After the hearing on June 22, 2006 the Board voted to deny your application. The enclosed document is the formal decision regarding the application.

Sincerely,

Jennifer Shillcox
Landuse Specialist/Zoning Administrator

Enc: Decision

Cc: [Omitted]

FINDINGS, CONCLUSIONS, AND DECISION OF THE ZONING BOARD OF ADJUSTMENT ST. CROIX COUNTY, WISCONSIN

File: SE0057

Property Owner: Donna Murr, Et Al

Parcel ID #s: 24.28.20.61 1G, 24.28.20.61 1G-1

Complete Application Received: May 1, 2006

Hearing Notice Publication: Weeks of June 5 and 12, 2006

Hearing Date: June 22, 2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard all the testimony, considered the entire record herein, and reviewed the site the Board makes the following general findings of fact and conclusions of law relating to all requested special exceptions and variances (Items# 1 - #8):

1. The applicant is Donna Murr (Et Al), property owners, 8897 Campton Drive, Inver Grove Heights, MN 55076.

2. The address of the site is 202 Cove Road, River Falls, WI 54022.

3. The site is located in part of Gov. Lot 2, Section 24, T28N, R20W, Town of Troy, St. Croix County, WI.

4. The Town of Troy Planning Commission recommends approval of this project and proposes research on the use of contiguous substandard lots in common ownership. The Town Board has not acted on this request.

5. The Land & Water Conservation Department recommends denial of the project in its entirety due to negative environmental impacts.

6. The Wisconsin Department of Natural Resources recommends denial of the project in its entirety due to lack of a demonstrated hardship, failure to meet the spirit and intent of the Ordinance, and negative environmental impacts.

7. The Federal Emergency Management Agency has not submitted a recommendation on this project.

Item #1 (Substandard Lot) Findings and Conclusions:

The Board made the following findings of fact and conclusions of law pertinent to Item # 1:

8. The applicants filed an application with the Board of Adjustment for a variance to use two contiguous substandard lots in common ownership in the Lower St. Croix Riverway District to be developed and/or sold as separate building sites.

9. The lots have been in common ownership and used by the applicants' parents and now the applicants for over 40 years.

10. Denying this variance would not constitute a taking and would not constitute an unnecessary hardship because it would not deprive the applicants of reasonable use of their property since their contiguous substandard lots can be developed and sold jointly as a single, more conforming parcel that is more suitable for residential development.

11. The fact that the applicants have paid property taxes on both lots and plan to sell and develop one of the lots in the future does not constitute a hardship, which cannot be based solely on an economic gain or loss. Furthermore, property taxes are determined by the tax assessor and are independent of zoning.

12. Granting this variance would allow a use that is prohibited in the Lower St. Croix Riverway District.

13. Granting this variance would not meet the spirit and intent of the Lower St. Croix Riverway District, which limits the use of substandard lots for the purpose of reducing the adverse affects of overcrowding and poorly planned shoreline and bluff area

development. The Cove Court area was developed nearly 50 years ago and features some of the most crowded development in the Rural Residential Management Zone of the Riverway District. The shoreline currently features numerous residential and accessory structures, as well as piers and docks that are highly visible from the river. Many of the lots also have outdated sanitary systems due to their small size and the presence of the slope preservation zone and floodplain. Granting this variance could result in yet another residence with access to the river, additional tree cutting and excavating, and another sanitary system in an area with serious limiting factors. The resulting development would not meet several other purposes of the Riverway District, including preventing soil erosion and pollution and contamination of surface water and ground water; providing sufficient space on lots for sanitary facilities; minimizing flood damage; maintaining property values; and preserving and maintaining the exceptional scenic, cultural, and natural characteristics of the water and related land of the Lower St. Croix Riverway in a manner consistent with the National Wild and Scenic Rivers Act and the Federal and Wisconsin Lower St. Croix River Acts.

14. Granting this variance is not consistent with the National Wild and Scenic Rivers Act, which was created to protect rivers, including the Lower St. Croix River, that, "*with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, and other similar values, and shall be preserved in free-flowing condition, and protected for the benefit and enjoyment of present and future generations*". The St. Croix River is a national treasure and one of the few rivers in the

United States that has regulations to protect its diverse scenic, recreational, and ecological values.

15. The applicants' lots, either separate or combined, do not have one acre of net project area and do not meet any of the other requirements for the use of substandard lots outlined in the St. Croix County Zoning Ordinance and in Wisconsin State Administrative Code NR 118, from which the County cannot be less restrictive.

16. The application of these standards in the Ordinance is not unique to this property since they apply to all substandard lots within the Riverway District, not just the applicants'. A variance is not necessary to secure to the applicants similar rights to neighboring landowners. At least eight other property owner s in the immediate Cove Court / Cove Road area own one or more contiguous substandard lots along the river with just one building site. Many of these contiguous lots are over two acres combined.

17. Denying this variance will not damage the rights or property values of other persons in the area since they are subject to the same rules and regulations as the applicants. The rules and regulations are intended 10 protect existing property owners and the general public from the adverse affects of overcrowding and poorly planned development in the Riverway District.

Item #2 (Reconstructlon and Expansion Outside of Footprint) Findings and Conclusions:

The Board made the following findings of fact and conclusions of law pertinent to Item #2:

18. The applicants filed an application with the Board of Adjustment for a variance to reconstruct and expand

a nonconforming principal structure without using the same footprint as the original structure in the Lower St. Croix Riverway District.

19. Literal enforcement of the Ordinance would not result in unnecessary hardship since the applicants have a compliant building site on their lot where they could construct a new residence that meets the requirements of all applicable overlay districts and could accommodate a sanitary system that meets today's stronger environmental standards. Additionally, the applicants have other options for floodproofing, improving, and expanding their existing residence in the same footprint without need for a variance. To provide safe access to the beach on the lot, the Ordinance allows stairways and lifts with a special exception permit.

20. Granting this variance would not meet the spirit and intent of the St. Croix Riverway District, the intent of which is to allow property owners to rebuild what they have in the same footprint, and at the same time reduce the adverse impacts of existing, poorly planned development. Although the proposed footprint to be located further back from the river and the floodplain than the original, it would require more filling and grading and tree removal in the sensitive shoreline area than floodproofing, improving, and expanding the existing structure on the original footprint. Unlike the original footprint, which is located approximately 10-20 feet from the base of the slope preservation zone, the proposed footprint extends approximately 30 feet into the slope preservation zone and will require a large amount of cutting and filling, which is prohibited in the Riverway District.

21. The Ordinance limits filling and grading associated with reconstructing or altering a nonconforming principal structure to only the minimum necessary to accomplish the reconstruction or alteration in compliance with other provisions of the Riverway District. Moving the footprint is not in compliance with the provisions of the Riverway District and will require additional filling and grading that will increase the negative environmental and visual impacts on the river.

22. Granting this variance could be contrary to the health, safety, or general welfare of the public. It could potentially be adverse to the value of the Opitz property to the west since the proposed residence would be located only ~ 10 feet from the existing shared driveway access, potentially making emergency vehicle access to Mr. Opitz's property more difficult. The existing driveway access is narrow due to the existing topography of the property.

Item #3 (Variance for Filling and Grading and Structures in the SPZ) Findings and Conclusions:

The Board made the following findings of fact and conclusions of law pertinent to Item #3:

23. The applicants filed an application with the Board of Adjustment for a variance for filling and grading and placing a structure in the slope preservation zone (SPZ) in the Lower St. Croix Riverway District pursuant to Section 17.36 H.3.a-c of St. Croix County Zoning Ordinance.

24. Literal enforcement of the Ordinance would not result in unnecessary hardship since the applicants have a compliant building site on their lot where they could construct a new residence that meets the

requirements of all applicable overlay districts and could accommodate a sanitary system that meets today's stronger environmental standards. Additionally, the applicants have other options for floodproofing, improving, and expanding their existing residence in the same footprint without need for a variance.

25. Granting this variance would not meet the spirit and intent of the St. Croix Riverway District. The intent of limiting activities and structures in the slope preservation zone is to prevent soil erosion; maintain property values; and preserve and maintain the exceptional scenic, cultural, and natural characteristics of the water and related land of the Lower St. Croix Riverway in a manner consistent with the National Wild and Scenic Rivers Act and the Federal and Wisconsin Lower St. Croix River Acts. Unlike the original footprint, which is located approximately 10-20 feet from the base of the slope preservation zone, the proposed footprint extends into the slope preservation 20ne and will require a large amount of cutting and filling along slopes of approximately 25 percent. This type of activity at the base of a steep slope can cause severe erosion and slumping if not done properly, and if not permanently stabilized upon completion.

26. Granting this special exception could be contrary to the health, safety, or general welfare of the public, and could be substantially adverse to the property values of neighboring residents since the proposed cutting and filling at the base of a steep slope can cause severe erosion and slumping if not done properly, which in turn could potentially cause damage to the applicants' proposed residence, to developed adjacent

properties above the bluffline, and to the shared driveway leading to the Opitz propeny to the west.

Item #4 (Special Exception for Filling and Grading within 40 feet of the SPZ) Findings and Conclusions:

The Board made the following findings of fact and conclusions of law pertinent to Item #4:

27. The applicants filed an application with the Board of Adjustment for a special exception permit for filling and grading within 40 feet of the slope preservation zone (SPZ) in the Lower SL Croix Riverway District pursuant to Section 17.36 F.3.a.5 of St. Croix County Zoning Ordinance.

28. Granting this special exception would violate the spirit and intent of the Riverway District since the amount of fill and proposed cutting would increase the ground elevation by up to approximately six feet and change the topography, drainage, natural appearance, and ecology of the bluff and the shoreland area. It will also require the removal of several mature trees within the OHWM setback and could lead to damage of the remaining trees from excavating, filling, and construction activities, as well as a reduction of terrestrial near-shoreland habitat. Finally, the end result will be a residence that, while elevated to meet the floodplain standards, is much higher and potentially more visible from the river than what currently exists, thus detracting from the scenic and recreational value of the Lower St. Croix River Valley.

29. Granting this special exception permit would be contrary to the public health, safety, and general welfare and could be substantially adverse to property values in the neighborhood affected. While the

hydraulic analysis submitted by the applicants indicates that the fill will not increase the Regional Flood Elevation, it still has the potential to reduce the storage capacity of the floodplain and could potentially lead to increased flood damage on properties upstream and downstream.

Item #5 (Special Exception for Filling and Grading in the Shoreland) Findings and Conclusions:

The Board made the following findings of fact and conclusions of law pertinent to Item #5:

30. The applicants filed a special exception request for filling and grading in excess of 2000 square feet in the Shoreland District in order to elevate their new residence on fill as required in the Floodplain District.

31. Granting this special exception would violate the spirit and intent of the Shoreland District since the amount of fill would substantially increase the ground elevation in the shore land area. This will change the topography, drainage, natural appearance, and ecology of the shoreline. It will also require the removal of several mature trees within the OHWM setback and could lead to damage of the remaining trees from excavating and construction activities, as well as a reduction of terrestrial shoreland habitat. Finally, the end result will be a structure that, while elevated to meet the floodplain standards, is much higher and potentially more visible from the river than what currently exists, thus detracting from the scenic and recreational value of the Lower St. Croix River Valley.

32. Granting this special exception permit would be contrary to the public health, safety, and general welfare and potentially be adverse to property values

in the neighborhood affected. While the hydraulic analysis submitted by the applicants indicates that the fill will not increase the Regional Flood Elevation, it still has the potential to reduce the storage capacity of the floodplain (particularly when considering the cumulative impact of numerous fill projects in the floodplain of the river) and could potentially lead to increased flood damage on properties upstream and downstream.

33. It is not known whether or not the proposed fill can withstand flood pressures, depths, velocities, uplift and impact forces, and other regional flood factors. The wrong type of fill could wash out and potentially lead to greater negative environmental impacts and flood damage, which would not be in the public interest.

ZONING BOARD OF ADJUSTMENT

Signed: _____

Clarence W. Malick, Chairperson

Date Filed: 06/28/06

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

JOSEPH P. MURR, et al. Case No.: 12-CV-258

Plaintiffs,

v.

STATE OF WISCONSIN and
ST. CROIX COUNTY,

Defendants.

Plaintiffs' Brief Opposing Summary Judgment, and Affidavit of R. Michael Waterman, Certified Record Docket No. 22, dated Aug. 1, 2013

INTRODUCTION

The Plaintiffs brought this claim, alleging a regulatory taking of a vacant residential lot in the St. Croix Cove Subdivision, along the St. Croix River. They oppose summary judgment on multiple grounds, but essentially, there are material issues of disputed fact that are relevant to the taking of the Plaintiffs' lot. Evidence in the record shows that the Plaintiffs are prohibited from developing or selling their lot, rendering it without economic or beneficial value.

FACTS

A. History of the Property.

There is no dispute about the history of the property. The Plaintiffs own two, residential lots in the St. Croix Cove Subdivision along the St. Croix River in the Town of Troy. Lot F is improved with a cabin, and Lot E is vacant. The Plaintiffs' regulatory taking claim relates only to Lot E.

The lots were created in 1959 when the land was subdivided by two, certified survey maps. Lot F was created by a CSM recorded on July 21, 1959 in volume I of survey maps, page 10, document 258820. (Waterman aff. Exhibit A). Lot E was created by a CSM recorded on July 27, 1959 in volume I, page 10, document 258940. (Id. Exhibit B).

The Murr family acquired both lots in two separate transactions in the early 1960s before the enactment of zoning regulations along the St. Croix River. Plaintiffs' parents, William and Margaret Murr, acquired Lot F in 1960. Shortly afterwards, they built a cabin near the river, and then transferred title to their business, William Murr Plumbing, Inc.

After the cabin was built, the Murrs bought the adjacent Lot E in 1963. (Donna Murr dep. p. 17). The Murrs bought it as an investment and planned to one day construct a year-round retirement home on top of the bluff. (Donna Murr dep. pp. 17-18, 65, 139; Michael Murr dep. pp. 8-9). Lot E has never been improved and remains vacant to this day. (Donna Murr dep. p. 16).

In 1994, Lot F with the cabin was transferred to the Murrs' children: Joseph Murr, Michael Murr, Peggy Heaver, Donna Murr, Thomas Murr and Steven Murr.

The vacant Lot E was transferred to the children in 1995. (Donna Murr dep. p. 17). Subsequently, Thomas Murr and Steven Murr quit claimed their interests to their four other siblings.

(Donna Murr dep. p. 10). Those siblings are the current owners and are the Plaintiffs in this lawsuit.

B. Facts Related to the Regulatory Taking

The Plaintiffs and their parents had always planned on either developing Lot E for themselves or selling it to someone else. Lots E and F were tax assessed as separate, residential lots. (Peggy Heaver dep. pp. 14-15; Koski dep. pp. 8, 14-15). The tax assessor assessed Lot E with the assumption that it was a buildable lot, and assessed it accordingly. (Koski dep. p. 15).

Starting in 2004, the Plaintiffs started exploring the possibility of flood-proofing the cabin. (Donna Murr dep. p. 19). The cabin had suffered several floods of the St. Croix River, and there had been many near-floods that threatened the cabin. (Murr dep. pp. 50-51). The Plaintiffs explored numerous construction alternatives to flood-proof the cabin, all of which required variances and special exception permits. (Donna Murr dep. pp. 68-78). The Plaintiffs eventually submitted a plan and applied for several variances to construct the cabin on Lot F. (Donna Murr dep. p. 93).

The Plaintiffs' variance application also included a request to sell the adjacent Lot E. The Plaintiffs planned to use the proceeds of the sale to finance the construction on Lot F. (Donna Murr dep. pp. 20-21). However, Lot E does not meet the minimum lot size requirements of the zoning ordinance. Lot E has .5 acres of net project area, but ordinance requires 1 acre.

(ST CROIX COUNTY ORDINANCE 17.36.I.4; Sonnentag dep. pp. 38-39; Fodroczi dep. pp. 58-59). Because Lot E does not meet the code's size requirement and because it has common ownership with Lot F, the zoning ordinance prohibits the sale and development of Lot E as a separate parcel. (Sonnentag dep. pp. 24- 26, 45). The regulation reads:

I. NONCONFORMING USES AND STRUCTURES AND SUBSTANDARD LOTS

* * *

4. SUBSTANDARD LOTS

a. Lots of record in the Register Of Deeds office on January 1, 197 6 or on the date of the enactment of an amendment to this subchapter that makes the lot substandard, which do not meet the requirements of this subchapter, may be allowed as building sites provided that the following criteria are met:

1) The lot is in separate ownership from abutting lands, or

2) The lot by itself or in combination with an adjacent lot or lots under common ownership in an existing subdivision has at least one acre of net project area. Adjacent substandard lots in common ownership may only be sold or developed as separate lots if each of the lots has at least one acre of net project area.

(ST. CROIX COUNTY ORDINANCE § 17.36.I.4; see also WIS. ADMIN CODE § NR 118.08(4) (emphasis added); see also Fodroczi dep. pp. 38-39).

The Board of Adjustment heard the variance application on June 22, 2006. On June 28, 2006, the board issued a written decision, denying the application in its entirety. (Fodroczi dep. pp. 40-41). Only the denial related to Lot E is relevant to this takings claim.

The board of adjustment's decision to deny the sale of Lot E was affirmed by the circuit court and court of appeals. (Fodroczi dep. pp. 48, 55-56). The Wisconsin Supreme Court denied a petition for review on May 24, 2011.

As a result of the board's denial and court decisions affirming the board, the Plaintiffs cannot sell or develop Lot E as a separate lot, and therefore, Lot E has no independent uses. (Sonnentag dep. pp. 50-51). Lot E is situated in a predominantly residential area, (Fodroczi dep. pp. 63-64) and was subdivided as a residential lot. However, a house cannot be constructed on Lot E because of the minimum lot size requirement. (Sonnentag dep. pp. 53-54). If not for the minimum lot size regulation, Lot E is developable. There is a building site for a single-family residence that meets the setback requirements. (Keith Heaver dep. pp. 21-22; see also Fodroczi dep. p. 63).

Other uses of land permitted by the zoning code are not feasible on Lot E. For example, Lot E cannot be used as a nature or wildlife conservancy because the lot is too small. (Sonnentag dep. p. 56). A small conservancy is 100 acres. (Fodroczi dep. p. 8), but Lot E is only 1 acre. Conservancy is unsuitable for Lot E because it is situated in an existing subdivision. (Sonnentag dep. p. 56). Agriculture and forestry uses are not feasible for the same reasons, and because of the lot's steep terrain. (Sonnentag dep. pp. 56-57;

Fodroczi dep. pp. 66-68). Uses as a public park, wayside, rest area, information area and scenic overlook would require dedication to an interested municipality, but such uses are unlikely because of Lot E's location in the middle of a residential subdivision. (Sonnentag dep. p. 58). David Fodroczi, the former Planning and Zoning Director for St. Croix County, was unable to identify any viable uses for Lot E without careful examination of the site and the ordinances. (Fodroczi dep. pp. 76-77).

Because Lot E cannot be developed as an independent lot, it only has use and value as "excess land" to the adjacent property owners. (Williamson dep. pp. 57, 63-64; Koski dep. pp. 16-17). Excess land is acreage that exceeds the minimum lot size but falls short of the acreage needed for two lots. (Williamson dep. p. 65). Excess land is 50 to 90% less valuable than land that can be independently developed. (Williamson dep. pp. 69-70; Koski dep. pp. 20-21). The tax assessor explained, " . . . we make huge reductions [in value] for excess land . . . because the excess land is you can't build or do anything on it in most cases." (Koski dep. p. 16).

Regarding the Murrs' Lot E, if it could be developed as a separate lot it was worth $410,000 as of June 28, 2006, the date the board of adjustment enforced the zoning code. (Williamson dep. p. 47). This value is comparable to the 2006 tax assessed value, which was $404,500. (Koski dep. pp. 13-14). Because Lot E cannot be independently developed, it only has value as excess land to an adjoining property owner. (Koski dep. p. 16). As excess land, the Plaintiffs' appraiser valued Lot E to be worth only $40,000. (Williamson dep. pp. 70, 75). The tax assessor reached a similar conclusion, valuing

it at $49,900. The assessor explained, " . . . that's what we feel it would be warranted for this value once we found out that it wasn't buildable and we'd have to com bine it [with Lot F]." (Koski dep. p. 17).

In 2011, after the litigation over the board of adjustment's decision was finished, the tax assessor combined the tax assessments for Lot E and F. (Koski dep. pp. 15-17). This was done because Lot E was determined to be unbuildable as a separate lot. (Koski dep. pp. 15-17). Referring to Lot E, the assessor explained, " . . . we call it excess land because it cannot be built on." (Koski dep. p. 16).

Plaintiffs commenced a takings claim because Lot E was subdivided and created to be a residential lot. Over the years, the Plaintiffs paid taxes for a buildable lot. The enforcement ofNR 118 and the corresponding county zoning ordinances prohibit the Plaintiffs from selling or developing Lot E. That leaves the Plaintiffs with no beneficial or economically viable use for Lot E, which led the Plaintiffs to asserting this regulatory taking claim.

ARGUMENTS

[Omitted]

CONCLUSION

Material issues of fact surround the taking of Lot E as alleged by the Plaintiffs. Therefore, summary judgment should be denied.

Dated: 8-1-13

MUDGE, PORTER, LUNDEEN & SEGUIN, S.C.

Attorneys for Plaintiffs

BY: s/ R. Michael Waterman
State Bar No. 1025674

[Counsel information omitted]

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

JOSEPH P. MURR, et al. Case No.: 12-CV-258

Plaintiffs,

v.

STATE OF WISCONSIN and
ST. CROIX COUNTY,

Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' BRIEF OPPOSING SUMMARY JUDGMENT

STATE OF WISCONSIN }
ST. CROIX COUNTY }

R. Michael Waterman, first being duly sworn, deposes and says as follows:

1) I am an attorney with Mudge Porter Lundeen & Seguin, S.C., attorneys for the Plaintiffs. I submit this affidavit in opposition to the Defendants' motion for summary judgment.

2) Attached as Exhibit A is the Lot F certified survey map that was recorded on July 21, 1959 in volume 1 of survey maps, page 10, document 258820.

3) Attached as Exhibit B is the Lot F certified survey map that was recorded on July 27, 1959 in volume 1, page 10, document 258940.

4) Attached as Exhibit C is the deposition transcript of David Fodroczi.

5) Attached as Exhibit D is the deposition transcript of Donna Murr.

6) Attached as Exhibit E is the deposition transcript of Jon Sonnentag dated 03/11/13.

[list of exhibits not included
in Joint Appendix omitted]

* * * * *

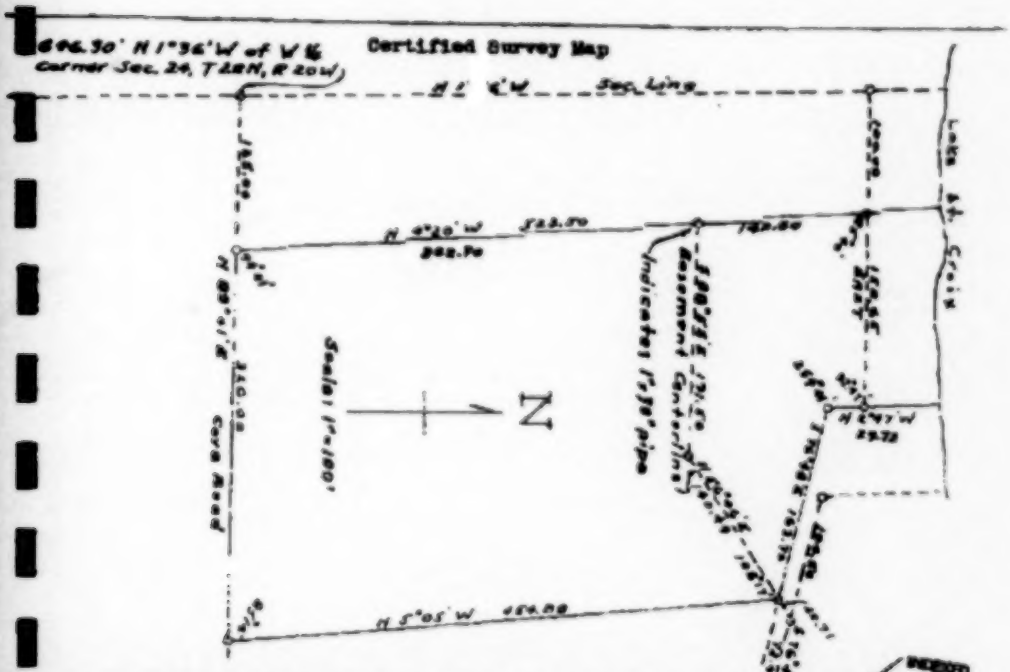
11) Attached as Exhibit J is the deposition transcript of Timothy Williamson.

s/ R. Michael Waterman

Sworn and subscribed before
me this 1st day of August, 2013.

[notarization omitted]

1st Survey Map 7/18/59 (Vol. 1 Page 9)



A parcel of land located in Gov. Lot 2, Sec. 24, T 28 N, R 20 W, further described as follows: from a point on the west line of said Sec. 24 which is 646.30 feet N 1°36' W of the west quarter corner of said Sec. 24, go E 89°41' E a distance of 135.00 feet to point of beginning for parcel to be conveyed herein: thence N 4°20' W a distance of 523.80 feet, thence due east on a meander line a distance of 158.65 feet, thence S 2°47' E a distance of 29.72 feet, thence S 76°48' E a distance of 183.70 feet, thence S 5°05' E a distance of 454.80 feet to Cove Road, thence S 89°41' W a distance of 320.00 feet along Cove Road to point of beginning, including all land between the meander line and Lake St. Croix and an easement for an access road 30 feet in width from Lake St. Croix to Cove Road as now opened and travelled as shown above. Parcel described above is subject to an easement for an access road 30 feet in width the centerline of which begins at a point on the west line of said parcel a distance of 392.70 feet N 4°20' W of the southwest corner thereof and extends S 88°55' E a distance of 191.80 feet, thence N 58°46' E a distance of 140.49 feet.

RECEIVED
258820
REGISTER'S OFFICE
ST. CROIX CO., WIS.
July 18, 1959
9:00 o'clock A. M.
Volume 1
Survey Maps
Page 9

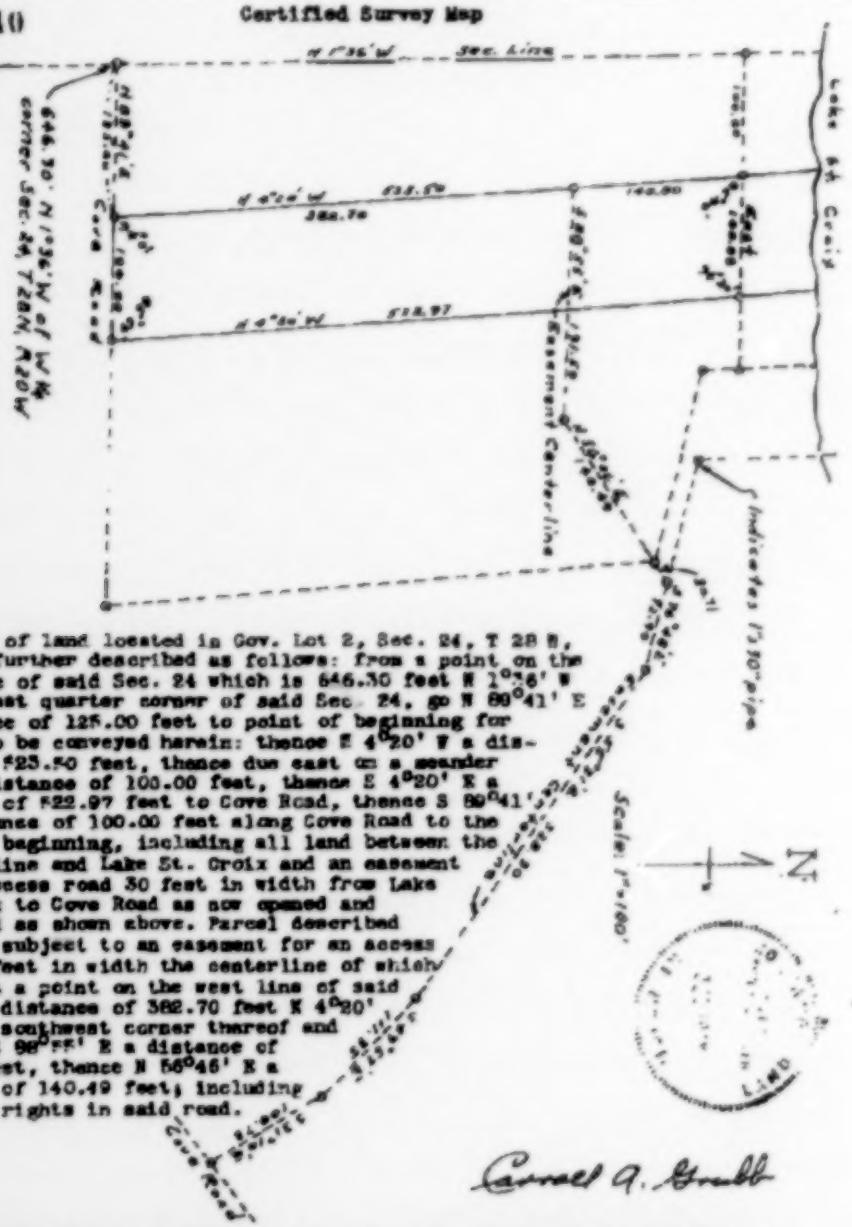
Carroll A. Grubb

I certify that the above is a true and correct map of the parcel surveyed mapped and described and that I have fully complied with the provisions of Sec. 236.34 of the Statutes. Surveyed July 18, 1959 for Winford, Inc.

This instrument prepared by Carroll A. Grubb, Reg. Land Surveyor

258940

Certified Survey Map



A parcel of land located in Gov. Lot 2, Sec. 24, T 28 N, R 20 W, further described as follows: from a point on the west line of said Sec. 24 which is 646.30 feet N 1°36' W of the west quarter corner of said Sec. 24, go N 89°41' E a distance of 125.00 feet to point of beginning for parcel to be conveyed herein: thence S 4°20' W a distance of 525.50 feet, thence due east on a meander line a distance of 100.00 feet, thence N 4°20' E a distance of 522.97 feet to Cove Road, thence S 89°41' W a distance of 100.00 feet along Cove Road to the point of beginning, including all land between the meander line and Lake St. Croix and an easement for an access road 30 feet in width from Lake St. Croix to Cove Road as now opened and travelled as shown above. Parcel described above is subject to an easement for an access road 30 feet in width the centerline of which begins at a point on the west line of said parcel a distance of 382.70 feet N 4°20' E of the southwest corner thereof and extends S 88°55' E a distance of 191.50 feet, thence N 56°46' E a distance of 140.49 feet; including easement rights in said road.

Carroll A. Grubb

I certify that the above is a true and correct map of the parcel surveyed, mapped and described and that I have fully complied with the provisions of Sec. 236.34 of the Statutes. Surveyed July 18, 1959, for Rohland H. Thommsen, Jr.
This instrument prepared by Carroll A. Grubb, Reg. Land Surveyor.

Exhibit C, Deposition of David Fodroczi,
dated Jan. 30, 2013 (excerpts),
Certified Record Docket No. 22,
Circuit Court of St. Croix County

* * * * *

Page 63

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14 Q Okay. Subject to verification of the correct setback

15 distances, it would appear, just by looking at this

16 page of the exhibit, that that is what Ms. Shillcox

17 was trying to denote, the setback distances?

18 A Yes.

19 Q And, again, subjetct to those qualifications, again, it

20 would appear that there's at least an area within each

21 parcel where the setback distances would be met?

22 A Yes.

23 Q Assuming that the numbers are accurate?

24 A Yes.

25 Q Now, the Cove area, the Cove neighborhood, is all

Page 64

1 residential, correct?

2 A Largely, yes.

3 Q There's a farm field, I think, further to the -- to

4 the south, but along the river, it's all residential?

5 A Largely, yes.

6 Q Are you aware of any other uses besides residential

7 use in that Cove area along the river?

8 A Right on the river?

9 Q Yes.

10 A Generally, no.

* * * * *

Exhibit E, Deposition of Donna Murr,
dated Jan. 29, 2013 (excerpts),
Certified Record Docket No. 22,
Circuit Court of St. Croix County

* * * * *

Page 9

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Q Okay. How often does -- do you use the summer cabin?

A Well, I don't use it in the winter.

Q Okay.

A The road to gain access is not maintained, and I don't own a snowmobile or anything to help me get up and down the hill, so I don't use it at all in the winter.

During the summer months, depending on the weather and what I've got going on, I might use it every weekend.

I might use it one weekend a month. I use it a few

12 times in the fall. Usually take a week off during the

13 4th of July and spend the whole week out there each

14 year.

* * * * *

Page 17

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12 Q Before 1994, did your parents ever try to develop the

13 empty lot known as Lot E?

14 A No.

15 Q Did they ever tall about it?

16 A Yes.

17 Q What would they discuss?

18 A They would talk about building their retirement home

19 on top, on the bluff. They were going to build a

20 year-round home.

21 Q So the idea would be that they would have a retirement

22 home year-round on the top of the bluff and they would

23 still have the cabin at the bottom...

24 A Right.

25 Q --correct?

A They --

Q And the cabin would be used for summertime for the family?

A Yes. And they were going to divide the lot so it was an upper lot and a lower lot rather than two side by side lots.

Q And what type of retirement home would they build? Something --

A A single-family. I remember my mom talking about building a Spanish style home. I never really knew what that meant, but that's what her dream was. It wasn't intended to be a shared home like the cabin is. It was intended to be their -- their home.

Q So no vision that there would be multiple bedrooms for all the various family members?

A No, nothing -- well, no, I don't recall anything like

that.

Q And they would have also considered changing the parcel boundaries, is that what you said?

A Yes.

Q And how would they change -I guess what type of discussions did they have before 1994 about changing the boundaries?

A Well, because they wanted to build a home in I guess what would be described as in the middle of the two

Page 19

existing lots, so in order to do that, they would redraw the lot lines. My dad always called it redrawing the lot lines. Instead of splitting the lots, you're just-- instead of them going up and down, they would redraw the line in the middle of the bluff, so you have a one lot on the top of the bluff, so you could build a home right in the middle, and then the cabin would stay on the bottom where it is.

Q And did your father or mother ever approach the County or the State or the Town about redrawing the lot lines before 1994?

A Not that I am aware of.

Q So with regard to this property, is the first time that anyone from your family approached the County, the State, or the Town, would that have been in around late 2004, 2005?

A Yes.

Q And that would have been spearheaded, for lack of a better word, by you, correct?

A Spearheaded by me and my siblings.

* * * * *

Page 20

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A We went to the County to seek approval to do floodproofing on our cabin.

Q Okay.

A So we worked with them to develop a plan to floodproof.

As we were discussing amongst the family how we would
pay for the floodproofing, we decide that we could
fund the project by selling the adjacent lot, and it
was at that time when we mentioned it to the County,

Page 21

and they said, well, you can't sell that lot, and we
were quite flabbergasted.

Q So this would be the empty Lot E?

A Yes.

* * * * *

Page 42

Q And while I know that you disagree with the operation
of the regulations, do you have any disagreement with
the purpose and intent of the St. Croix River Valley
Ordinance?

MR. WATERMAN: As it's stated in this particular letter?

MR. BITAR: Yes, as it's stated in this

letter.

A I don't have any issues with that.

Q (By Mr. Bitar, continuing) It would be fair to say that these ordinances are meant to protect the environmental beauty of the area, correct?

A Yes.

Q And they serve to protect everybody's mutual interest in that scenic beauty, correct?

A Yes.

Q And you've certainly worked over the last few years with other regulations, such as the shoreland and floodplain regulations, correct?

A Yes.

Q And I don't expect you to have an understanding to the detail of what those mean, but what is your general understanding of the -- of the differences between the Lower St. Croix River Valley Ordinance versus the shoreland and floodplain regulations? Do you have any

understanding of the differences?

A Well, I mean. I've read through them. It's been a while. I think they're all basically trying to accomplish the same thing.

Q Okay. What is your best understanding of what those shoreland and floodplain regulations are trying to achieve?

A Well, the St. Croix River's a national scenic riverway. It's one of the cleanest rivers in the world. I think the main purpose is to maintain that, the scenic beauty of the river, so that people can enjoy it, whether they live on the river or they just want to use the river.

Q And the floodplain ordinances seek to achieve protection of people and property from flooding, correct?

A Well, I would say the floodplain ordinances are to protect those that are in the floodplain and to prevent

18 further development in areas that are prone to
19 flooding.
20 Q And do you have any disagreement with the underlying
21 purposes of the floodplain and shoreland ordinances?
22 A I don't have a problem with their purpose --
23 Q And you understand --
24 A -- as I understand it.
25 Q Okay. You understand that they have a purpose to try

Page 44

1 and protect the safety and welfare of people from
2 flooding, basically --
3 A Certainly.
4 Q -- correct?
5 A Yes.
6 Q And you don't have a disagreement with that, correct?
7 A No.
8 Q The Town of Troy is where your property is situated,
9 correct?
10 A That's right.

11 Q And the Town of Troy has its own riverway ordinance,

12 is that true?

13 A I believe they do.

14 Q Have you ever reviewed that ordinance?

15 A I'm sure that I have, but it's been a long time.

16 Q Okay. And what's your best understanding of what the

17 difference is, if any, between the --

18 A I don't know.

19 Q -- Troy ordinance and the County's ordinance?

20 A I couldn't tell you what the difference is. I think

21 the general purpose is probably very similar.

22 Q Okay. And do you have any disagreement with what the

23 Troy ordinance is trying to achieve?

24 A No.

* * * * *

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6 Q Okay. Do you know if any of your other neighbors have

7 ever gone before the Town Board for variances or

8 exceptions to build or modify their homes in the

riverway area?

A I know that Lyn Opitz next door would have gone before the Board, I had seen his name on prior Board minutes. He certainly needed to request variances. We were at a meeting that he--we received notice as a neighbor that he was going to be applying for variances, so we went to listen and see what he had in mind because he did completely tear down the existing structure and rebuild, so as neighbors, we wanted to know what he had in mind so he applied for and was granted every variance that I'm aware of because he was able to rebuild a nicer -- I guess be was able to rebuild.

Q The Opitz family generally stayed within their same footprint, isn't that true?

A Yes.

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Q And so was this the first time that you became aware of the various regulations that may apply to your property?

A If -- as I recall, this letter summarized conversations, so reading this letter would not have been the first time that I was aware of this. It more summarized what had been previously discussed or that I would have read on my own.

Q And when did you have those prior discussions? Would those have occurred in December 2004?

A That would be a fair estimate of the time.

Q So around December '04 when you filed these applications would have been around the time when you first began to realize what regulations applied to your land, correct?

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A I think that's fair.

* * * * *

Page 50

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Q Is this the first time that you or anyone in your family became aware of the particular flood elevations relative to your property?

A We were always pretty aware of the flood elevations having been flooded five times before this.

Q Okay.

A So we were very well aware of the flood elevations.

Q At some point today, we were going to get there, so we'll just do it now. Before 2005, how often had that property been flooded?

MR. WATERMAN: Can you be more specific?

MR. BITAR: Yeah.

Q (By Mr. Bitar, continuing) You just mentioned that it had been flooded about five times?

A Yes.

22 Q I guess how do you describe flooding?

23 A Well, the five times it was flooded is when we actually

24 filed a claim with our flood insurance --

25 Q Okay.

Page 51

1 A -- because there was water inside the cabin.

2 Q And who provided your flood insurance?

3 A It was through the National Flood Insurance Program.

4 Q Have you ever had private insurance?

5 A Well, we have private insurance that doesn't cover

6 floods.

7 Q So when you applied, you were applying to FEMA,

8 correct?

9 A Yes.

10 Q Okay. And you were applying on occasions where water

11 had actually entered the cabin, correct?

12 A That's right.

13 Q And these five occasions occurred before 2005, is that

14 correct?

15 A Yes, they all did.

16 Q What about since 2005, have there been flooding

17 occasions?

18 A There were two times where we sandbagged and we

19 boarded up the cabin and water did not actually enter

20 the cabin, so we were almost flooded two times since

21 then.

* * * * *

Page 65

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21 Q And as I understand -- well, we'll get there. You've

22 also had an understanding since 2006 that steps could

23 be taken to floodproof the current cabin, correct?

24 A That steps could be taken to floodproof the current

25 cabin, yes.

Page 66

1 Q And have you ever had -- I know you've had those kind

2 of discussions with the County. Have you ever had

those discussions with FEMA about floodproofing that cabin?

A Yes.

Q Okay. And when did you have those kind of discussions?

A I made phone calls, so they've been phone conversations. I've gotten their brochures and their literature on how to floodproof and so on and so forth over the years.

Q Have you ever had anything in writing from FEMA in terms of what you could do to floodproof that cabin?

A Well, the brochure, which wasn't specific to our case, but it would lay out, you know, dormers that let the water come in and out or different options that may be possible in some areas, but some of the recommended ways of floodproofing may not be approved by the County.

(Deposition Exhibit 4 was marked for identification.)

Q (By Mr. Bitar, continuing) I'll show you Exhibit 4.

This is an April 28th, '05 letter to you from Jenny Shillcox. Have you seen this before?

A Yes.

Q And in this letter, it's following up on a meeting

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consideration to reconstructing within the same footprint, is that fair?

A Yes.

Q And why did your family not pursue that further?

A We felt there were better alternatives. Building

Page 68

on the existing footprint would require you to walk up a full flight of stairs to enter the main living area, where, currently, the main living area is on grade. Having three older brothers that are in their

'60s with various health issues, we didn't feel that was a prudent way to floodproof. It would limit their access.

It also would -- it would involve the lower level continuing to be flooded. Although the lower level would be uninhabitable, it would still be part of the structure. Having a lower level continue to be flooded would continue to have mold in the home. We wanted something that was never going to be flooded and that would be dry on all sides and in the basement. So we felt that a better alternative would be to move it father away from the river and on fill and out of the floodplain. We would preserve all the trees that are between the cabin and the river, making it more inconspicuous.

Q Would one option available to your family be to stay

within the footprint but to somehow raise the home,

whether on fill or pylons?

A Yes.

Q And has your family ever considered that?

A Yes.

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Q And can you tell me what you discussed as a family?

A Pretty much what I just stated, with the stairs being the main issue, going up a full flight of stairs to enter the property.

Q So there was some concerns with access, limited access --

A Yes.

Q -- due to the stairway?

A Yes.

Q Were there any- were there any other concerns the option of having pylons or fill raise the home but staying within the same footprint?

A Well, we kind of go back to the curb appeal, beach

appeal, we would literally be the only cabin that looks like that on the river, so it would actually, we felt, would make it look undesirable. It would -it would stand out more than it does now. It would look, in our opinion, like something you'd see on the Carolina coast versus the St. Croix River. We felt we could do a better job of making it look good from the river by moving it back and putting it on fill.

Q If you had the home on the same footprint but raising it with fill, would that lessen these concerns about curb appeal?

A It would lessen it, but we still felt that moving it

backwards, away from the river and on fill, would be even better. Bringing in fill on the footprint, we

would have to take out a lot of trees out in front,

mature trees.

* * * * *

Exhibit E, Deposition of Jon Sonnentag,
dated March 11, 2013 (excerpts),
Certified Record Docket No. 22,
Circuit Court of St. Croix County

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Page 42

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22 Q Okay. Is there any reason why the Murrs could not build

23 a home on the top of their bluff that straddles the two

24 lots?

25 A They should be able to.

Page 43

1 Q Why do you believe that?

2 A Because they have the existing parcel. This would be

3 all conditioned upon removing the cabin structure below

4 and more officially combining the two parcels. But once

5 that's accomplished, the setback requirements leaves an

envelope that you could fit a residence in. They would -- the standard setback in the riverway is a hundred feet, but you can go down to 40 feet. And that's very typical, provided they construct something that complies with the sub requirements for that.

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Page 53

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Q And when were these lots created, roughly?

A I think it was '50s or so. I'd have to, I guess, confirm that. That was my --

Q '50s or '60s?

A Yeah.

Q And when did the substandard lot provisions that we've been talking about today come into existence?

A 19 like '72 or 74 was probably the first significant zoning ordinance. And it may have existed - some of the shoreland provisions and lot requirements may have

existed at that lime. I would assume that that would
have been likely the time frame that they came about,
the ordinance requirements came about. There was some
subs, but other ordinances, right, I think like in the
early '80s that may not have been until then. But I
would assume'72 probably would have been the date.

Q Is it your understanding that the substandard lot

provisions specifically have been in existence since
around that time?

A I would assume so. I don't know that for sure, but I
know they definitely existed in the '80s. The
ordinances that were in the '80s, I'm just not certain
if that first one in '72 had it.

Q Those substandard lot provisions would have been in
existence in the 1990s when the Murrs -- when the lots

were conveyed to the Murrs, right?

A I would believe so, yes.

* * * * *

Exhibit J, Deposition of Timothy Williamson, dated January 19, 2013 (excerpts), Certified Record Docket No. 22, Circuit Court of St. Croix County

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Page 47

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Q Okay. And at the bottom of this page, you determine that the market value of the property as of June 28th, 2006, is 410,000, right?

A As a building lot, yes.

* * * * *

Page 70

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Q In your opinion, the contributing value of the site as excess acreage is about $33,000 an acre, right?

A Correct.

Q And so you valued this property in the unbuildable
condition as $40,000, right?
A Correct.
Q What percentage diminution in value is that from your
first valuation of the site as a buildable lot?
A I would have to figure out the percentage, but it's

probably towards the higher range of 90 percent there,
close to that.
Q Can you do the math?
A I don't have a calculator, but it'd be close to 10
percent. Yeah, 10.25 is what I got.
Q So in your opinion, this property is worth 90 percent
less if it's non-buildable?
A Correct.
Q In your conclusion, you render a conclusion as the
contributing value of the site as excess acreage.
Contributing value to what?
A It could be as far as contributing value to the -- the

other parcel that has the cabin on it. Might look at a market value as far as you'd be limited as far as who would be interested in this property. Maybe one of the adjoining land owners would find that desireable to add to their -- their parcel, but as far as somebody just buying it, if you can't build on it, it's of little value to -- to most people.

* * * * *

STATE OF WISCONSIN
CIRCUIT COURT
ST. CROIX COUNTY

JOSEPH P. MURR, et al. Case No.: 12-CV-258

Plaintiffs,

v.

STATE OF WISCONSIN and
ST. CROIX COUNTY,

Defendants.

Affidavit of Mateo Reginato, Exhibit J, Certified Record Docket No. 24, dated Aug. 26, 2013

From: Alex Blackburn
Sent: Tuesday, April 12, 2005 10:52 AM
To: Robert Bezek: Jennifer Shillcox
Subject: FW: Murr Property Ownership

Bob and Jenny.

Here is the land info. for Tom Murr.

Alex Blackburn

Saint Croix County Zoning Specialist

---Original Message---

From: Ken Rohlf [mail to:krohlf@levander.com]
Sent: Tuesday, April 12, 2005 10:48 AM
To: Alex Blackburn

Cc: donnamurr@comcast.net
Subject: Re: Murr Property Ownership

Alex:

Per your request, below please find the acquisitions/dates of the various Murr properties. I have also attached a file that contains a "picture" of the various properties.

1. April 1960 - House lot purchased by William and Margaret Murr from Thomssen

2. March 1961- House lot transferred by William and Margaret Murr to William Murr Plumbing, Inc.

3. 1963 - Vacant lot purchased by William and Margaret Murr from Glendenning

4. January 1964 - Boathouse lot purchased by William and Margaret Murr from McCarthy

5. January 1966 - Deed from 1963 purchase by William and Margaret Murr from Glendenning is recorded

It is my understanding that you intend to circulate this information to the County Attorney to render an opinion as to the applicability of the County's ordinances relative to the Murr Property and the potential developability of the Vacant Lot We look forward to receiving the opinion of the County Attorney at their very earliest convenience Should you have any questions or if I can be of additional assistance do not hesitate to contact me. As you know, the Murrs are very interested in moving

forward swiftly on this matter. I look forward to hearing from you shortly.

Since this is our first correspondece via email, please respond that you have received the email.

Thanks,

Kenneth J. Rohlf
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul MN 55075
Phone: (651)451-1831
fax: (651)450-7384